TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

9:00 a.m. Thursday, November 10, 2011

Room 120
John H. Reagan Building
105 West 15th Street
Austin, Texas 78701

BOARD MEMBERS:

Victor Vandergriff, Chair Cheryl E. Johnson, Vice Chair Cliff Butler Blake Ingram Raymond Palacios Victor Rodriguez Marvin Rush Laura Ryan Johnny Walker

STAFF MEMBERS:

Linda M. Flores, Interim Executive Director Brett Bray, General Counsel

I N D E X

| AGENI | DA ITI | <u>EM</u> | PAGE |
|-------|-------------------|---|------|
| 1. | CALL A. | TO ORDER Roll Call and Establishment of Quorum | 4 |
| | В. | Public Comment (no commenters) | 4 |
| 2. | CONSI A. | ENT AGENDA Consideration of Enforcement Agreed Orders under Occupations Code, Chapter 2301 | 84 |
| | В. | Consideration of Enforcement Notice of of Violation Citation Agreed Orders under Occupations Code, Chapter 2301 | |
| | С. | Consideration of Enforcement Dismissal Orders under Occupations Code, | |
| | D. | Chapter 2301 Consideration of Settlement and Dismissal Orders under Occupations Code, §2301.204 (Warranty Performance Complaints) | |
| | E. | Consideration of Franchise Case Dismissal Orders under Occupations Code, Chapter 2301 | |
| 3. | RESOI | LUTIONS for INDIVIDUAL CONSIDERATION Consideration of Enforcement Motions for Disposition Based on Default under Occupations Code Chapter 2301 (see attached itemized list B) | 85 |
| | В. | Docket No. 09-0034 LIC - Star Houston, Inc. d/b/a Star Motor Cars v. Mercedes Benz, USA LLC; Star Motor Cars' Interim Appeal of SOAH ALJ's rulings on Motions to Abate and to Consolidate Docket No. 11-0003 LIC - Star Houston, Inc. d/b/a Star Moor Cars, Protestant, v. Mercedes-Benz USA, LLC, Respondent | 114 |
| 4. | Propo | LUTIONS for INDIVIDUAL CONSIDERATION csal of Rules under Title 43, Texas | |
| | A. | Chapter 206, Management Subchapter E. Advisory Committees §206.91 - §206.94 | 86 |
| | В. | Chapter 209, Finance Subchapter C. Donations and Contributions | 87 |

| | C. | Chapter 215, Motor Vehicle Distribution Subchapter H. Advertising | 87 |
|----|--------------------|---|-----|
| | D. | Chapter 217, Vehicle Titles and Registration New Subchapter G. Inspections | 87 |
| 5. | BRIE A . | FINGS and ACTION ITEMS Approval for Specialty Plate Designs 1. Sons of Confederate Veterans 2. Buffalo Soldiers | 6 |
| | В. | Advisory Committee Updates • Oversize/Overweight Advisory Committee Report | 89 |
| | | • SB 529 Special Advisory Committee Report | 81 |
| | C. | Briefing and Possible Approval of FY 2012 Motor Carrier MOU between TxDOT and TxDMV | 91 |
| | D. | Briefing and Possible Action Item on TxDMV Automation Systems Project; Sourcing, Procurement and Other Assistance | 114 |
| | Ε. | Chair Reports | 95 |
| | F. | Interim Executive Director Reports | 112 |
| 6. | EXEC | UTIVE SESSION | 113 |
| 7. | ACTI | ON ITEMS FROM OPEN SESSION (none required) | 114 |
| 8. | ADJO | URNMENT | 193 |

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PROCEEDINGS

MR. VANDERGRIFF: Good morning. I'm pleased to welcome you here today to the meeting of the Board of the Texas Department of Motor Vehicles. I'm now calling the meeting for November 10, 2011 of the Board of the Texas Department of Motor Vehicles to order, and I want to note for the record that the public notice of this meeting, containing all items on the agenda was filed with the Office of Secretary of State on November 2, 2011.

Before we begin today's meeting, please place all cell phones and other communication devices in the silent mode.

If you wish to address the board during today's meeting, please complete a speaker's card at the registration table in the back of the room. To comment on an agenda item, please complete a yellow card and identify the agenda item. If it's not an agenda item, we will take your comments up during the public comment portion of today's meeting.

Now I'd like to have a roll call, please, of the board members. Board Member Butler?

MR. BUTLER: Here.

MR. VANDERGRIFF: Board Member Ingram?

MR. INGRAM: Here.

MR. VANDERGRIFF: Board Member Palacios?

(512) 450-0342

ON THE RECORD REPORTING

| 1 | MR. PALACIOS: Here. |
|----|--|
| 2 | MR. VANDERGRIFF: Board Member Rodriguez? |
| 3 | MR. RODRIGUEZ: Present. |
| 4 | MR. VANDERGRIFF: Board Member Rush? |
| 5 | MR. RUSH: Here. |
| 6 | MR. VANDERGRIFF: Board Member Ryan? |
| 7 | MS. RYAN: Here. |
| 8 | MR. VANDERGRIFF: Board Member Walker? |
| 9 | MR. WALKER: Present. |
| 10 | MR. VANDERGRIFF: And Vice Chair Johnson is |
| 11 | absent today, and let the record reflect that I, Victor |
| 12 | Vandergriff, am here too and we do have a quorum. |
| 13 | Our first item of business on the record is the |
| 14 | public comment portion. This is not to comment on a |
| 15 | specific agenda item. Do we have any member of the |
| 16 | public? I do not have any cards indicating a wish to just |
| 17 | speak before the board. I don't see any. |
| 18 | Board members, I'm going to go out of order |
| 19 | here because I know we have a number of people here on |
| 20 | agenda item 5.A.1 and 2 and many of them are state |
| 21 | officials and one Congressional official that I know they |
| 22 | have other business they need to attend to as well here in |
| 23 | Austin, so we're going to move to agenda item 5.A. which |
| 24 | |

have four on the agenda. By a previous agreement that I

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had, it was a mistake that we had two of the four, plates 3 and 4, the Calvary Hill and the Keller High School plates on this agenda, so they will not be taken up today, but we will take up items A.1 and 2.

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I want to also apologize to the audience. do have only eight board members, and I think since last April I had indicated we would take this plate up again when we had nine full members. This department was created two years ago and we were created with a ninemember board to avoid precisely what happened in April and that was ties, and felt like the applicant deserved based on all that were here. Unfortunately, due to a number of circumstances, the most tragic being the death of one of our members, it's taken us a while to get to that point, and because of schedules, I'm not sure we're going to get to that point to where we have nine board members here. The vice chair had said she would be here, and then unfortunately, does have business that she has to take care of. She is a sitting tax assessor-collector in Galveston County and needs to be there for that, and I understand that so we will proceed on.

But with that, I'm calling up, we have the sponsor for the plate, the Sons of the Confederate

Veterans, and that is Commissioner Jerry Patterson.

MR. PATTERSON: Good morning, Mr. Chairman and

members. The good news is I'm losing my voice so I may not take all the time allotted, but I appreciate the opportunity to visit with you. We visited before back in April when we had the 4-4 tie.

And just for a little background, the Texas

General Land Office has, in effect, become a franchise of

Plates R Us. We have sponsored three plates, actually, I

think, two other plates besides the two that we have

before you today. We have sponsored an Adopt a Beach

plate, a Save Texas History plate, and now we're

sponsoring both the Sons of Confederate Veterans plate as

well as the Buffalo Soldiers plate, and there will be

more. I know you're going to be pleased to hear that

there will be more plates to come before you.

I'm going to start out with a quote from 1858, and the quote may be offensive to some, but nonetheless, this is an accurate quote by a very well known person, and let me read it so I'll not make any mistake:

"I will say then that I am not, nor have I ever been, in favor of bringing about in any way the social and political equality of the white and black races, that I am not now, nor have I ever been, in favor of making voters or jurors of Negroes, nor of qualifying them to hold office, not to intermarry with white people, and I will say in addition to this that there is a physical

difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain together, there must be a position of superior and inferior, and I, as much as any other man, am in favor of having the superior position assigned to the white race."

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That's a pretty offensive narrative, by today's standard, that would be disgusting, and I would ask

Congressman Lee if anyone applied for it, would we have a commemorative plate to honor that person? I would say not. Well, that person's name was Abraham Lincoln, and the same Lincoln that later in 1862 said, "If I could save the Union without freeing any slave, I would do it, if I could save it by freeing all the slaves, I would do it, if I could save it by freeing some of the slaves and leaving others alone, I would also do that. What I do about slavery and the colored race, I do because I believe it helps save the Union."

Now, what that speaks to is one of the bottom underlying premises of this discussion on this controversy, and that is what was the cause of the war, the one that commenced in 1861.

And I will also give you another quote that I think is also on point, and that's a quote that says: "In

this enlightened age there are few, I believe, but what will acknowledge that slavery as an institution is immoral and political evil in any country. I think it, however, a greater evil to the white than to the black race." And I'm excerpting from a very long quotation here. "The emancipation will sooner result from the mild and melting influence of Christianity than the storms and tempests of fiery controversy. While we see the course of final abolition of human slavery is onward and we give the aid of our prayers and all justifiable means in our power."

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That was a letter written in 1856 by a gentleman named Lee, Robert E. Lee, five years before the war, a gentleman who was opposed to slavery and opposed to secession.

My point being it's not as simple as we try to make this discussion, whether you are a proponent of the plates or an opponent of the plates. What we're doing, to some extent, is dumbing down history by saying if it's southern, it's bad by definition, if it's associated with those who wore the blue uniform, it's good by definition, and that is incorrect.

Also before the war Robert E. Lee said, "If the slaves of the south were mine, I would surrender them all without struggle to avert this war." Again, what I'm saying is it's not as simple as we try to make it.

We have folks who say, Well, I'm offended by the SCV plate. And my response is: And your point? No one has a right to go through life to be unoffended.

There will be others, and I've had conversations with a group of Indians, who were offended by the other plate that will be considered today, and that's the Buffalo Soldier plate. My response to them is: Well, get a grip, it's going to happen, as it should be.

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You know, during this discourse I've had some very interesting emails, I've been called some names, my favorite is the most recent one, troglodyte. I think I'm going to adopt that for future use, it's just got a nice ring to it. I've had the usual white supremacist, racist, bigot, whatever, but troglodyte, I kind of like that one, it's good a little sound to it.

But there will be other plates coming up.

There's an Indian tribe in Texas that wishes to have a plate as well, and I said, Sure, I'll do that. Now, there are some, I believe, who maybe are descendants of victims of some of the depredations that occurred on the frontier by Indians, and they may take offense at that. My answer to that is: Get a grip.

There are also some folks how have suggested:
Well, if you want to do that, how about a Mexican flag
plate. And I say bring it on because I would like to have

a plate that had the Mexican flag that flew over the Alamo, which most people don't know the flag that flew over the Alamo, at least in part, was a Mexican tri-color with the white panel and the words 1824. What a great idea, what a good idea to get people to start discussing and talking about our history and how it's not as simple as we try to make it out to be on all too many occasions.

There are those who have objected to it by saying this flag never flew over Texas. And my response to that is: What's your point? First of all, I'm not sure that's accurate. There were five battles in Texas, Battle of Sabine Pass, Galveston, Corpus Christi, Palmetto Ranch, there were also some naval engagements in Texas, and so I'm pretty sure the flag did fly over Texas. But that's not what it's about. The flag is not to honor the war, it's not to honor the government, it's not to honor the reasons for the war — and also, I will have to tell you that anybody who says the war was not about slavery is not actually being factually accurate, it was about slavery, but were it only about slavery there would have been no war.

But going back to my point about the flag never flying over Texas, the point of the flag was that it was the soldiers' flag, the Army of Northern Virginia, it was the flag that was carried into battle, it was the flag

that Hood's Texas Brigade served under throughout the war, tens of thousands of Texas marched into battle behind that flag. And we are here to commemorate the soldier, not the politician because in many wars, including the one that I most recently participated in in Southeast Asia, the Vietnam War, the wars are started by politicians who have no risk of shedding any blood in most cases, and young me and now young women go to war and suffer that outcome.

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Now, as a Vietnam Veteran I'm not proud of everything that occurred in Vietnam, I'm not proud of Mi Lai, I'm not proud of some of the activities of U.S. soldiers, but I'm proud of my service because I'm able to separate the good from the bad, I'm able to separate the fact that many of us believed that we were there to preserve and defend democracy and save the South Vietnamese from a Communist oppression. It didn't turn out that way, but I believe that there was nobility in the cause, even though all those who participated in the cause.

There are also those who say that this was a rebellion, this was a revolution, this was against authority, as if that is prima facie evidence that we should immediately dismiss this request. Well, I would say so was 1775, that was a rebellion against authority, it was unlawful, it was an overthrow of the existing

government, the British Crown. So was 1810, Diez y Seis, when Father Hidalgo declared independence from Spain of Mexico. That was a rebellion, it was something against existing authority, my goodness, how can we celebrate that? So was 1836 when we declared our independence from Mexico as the Republic of Texas. So to say that we should dismiss this because it was a revolution against authority is just, frankly, in my opinion, horse manure.

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And I want to tell you I am firmly behind both this plate and the Buffalo Soldiers plate, because what's the common denominator there, those are young men who answered the call and in their mind and inaccurately described defended what they believed was worthy of defense. The Confederate Soldier defended his state from an invading army, the Buffalo Soldier defended those who lived on the frontier from Indian depredations.

But we now know, in retrospect, we look back upon that between the 21st Century politically correct lens and we could say what did the Buffalo Soldiers do? Buffalo Soldiers is a name that started in 1871 and it described the 9th and 10th U.S. Calvary and the 24th and 25th U.S. Infantry which was comprised of all black units, usually with white officers. They served on the frontier and they were part of what we now know to be a very politically incorrect endeavor and that was the

subjugation of an entire race of people, the American Plains Indians. We can look upon that today and say, you know, that wasn't as noble as we thought it was at the time, but that's looking back through the 21st Century lens.

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We can look today back at the service of the Confederate Soldier and say, you know, there was slavery involved in that and that's not a good thing, but that's the 21st Century lens. That wasn't something that went before the face of that young soldier in the 9th and 10th U.S. Calvary serving as a Buffalo Soldier or in Hood's Texas Brigade, he said I'm defending those that I love. The politics of war don't really get down to the PFCs and lance corporals.

So I submit to you that all of these men who answered the call should be honored, whether they were the gray, and for that matter, whether they wore the blue in the Union Army from '61 to '65 or whether they wore the blue from 1867 when the frontier began to be manned with colored troops, as they were called then, or in 1871 when they were given the name Buffalo Soldiers. And I've had people say: The Buffalo Soldiers didn't do that, they were peacekeepers, they took telegraph lines and built roads and defended postal routes and chased down Comancheros and bandits.

Well, you know, their purpose for being on the frontier was to fight Indians, and it was our national policy started in 1834 of westward movement and eradication of the Indian population. We now know that those Indians ended up on reservations, many of them died, it was the Trail of Tears, and it's not politically correct. But I don't care. Those young men served their state and their nation with honor and dignity and they should be honored.

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So I would ask you to approve both of those plates, and I know I'm on agenda item 2 but anyway I'll testify on the Buffalo Soldiers as well, because they represent somebody who served honorably and they represent people who answered the call, and that's something we're defending. And I would be happy to entertain any questions.

MR. VANDERGRIFF: I neglected to mention this earlier, we have a number of speakers today, both for and against this plate, and I did notify several people that we would limit the speaking to three minutes. The applicant typically has ten minutes and they did take that here today, but we have a number of speakers so we limit each speaker to three minutes. And those that are against this plate, we have a considerable number, and I did have a request for one speaker to go last, but if there is any

order that anybody would like to go in, please let me know; otherwise, I'm just going to call the cards up as they have been given to me.

We will take first the speakers that are for this plate and we do have Paul Matthews here. I'm sorry, he is on 5.A.2, so we'll bring Mr. Matthews up later, I apologize for that. But we have Ray James here that's also for this plate.

MR. JAMES: Thank you for the chance to talk to you today. My name is Ray James. I live in College Station. I'm a past commander of the Texas Division of the Sons of Confederate Veterans. spoke to you a few months ago and I think I gave you my feelings about the plate at that time, I don't want to repeat that. I do want to just make two points today, given the short time available.

These plates with the SCV logo have been approved and are in service in several states. I've got photographs of nine of these, and if you don't mind, I'd like to just give you a couple of copies of those to look at while I talk. The point I want to make with those photographs is in those states the world didn't end, there was no appreciable controversy after those plates were approved. There's three at the end that are proposed, including ours. But those plates are on the road, the

concerns that have been raised didn't happen, and I hope that that will be helpful to you in your decision.

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I want to make one other point to rebut a statement that appeared in the press, at least that's what was reported to me by a Wall Street Journal reporter, I didn't see it myself. He said that Gary Bledsoe objected to this because, in the words he used, this flag never flew over Texas. Mr. Bledsoe is mistaken or misleading. The battle flag didn't fly over any state, in that sense he's correct. The battle flag is not a state flag. That's our logo because we honor the soldier, we're not trying to honor the Confederate government or the policy, we're honoring the men who fought. We use the flag they created on the battlefield as our logo since 1896.

But that flag flew over many Texas troops and I'm going to show you a few pictures here from Alan Sumrall's "Battle Flags of Texans in the Confederacy."

The 1st Texas Infantry Regiment; the 4th and 5th Texas Infantry Regiments; the 5th Texas Infantry Regiment again with battle honors; his is a tribute to an unknown Texas regiment; the 12th Texas Calvary Regiment; and many others which I don't have time to show you.

The flag flew over Texans, it flew over Texans who shed their blood on the battlefield. We're trying to honor those men. Tomorrow is Veterans Day. I hope this

board will remember that these veterans need to be honored too, and I thank you for your consideration.

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MR. VANDERGRIFF: Now we don't have any more cards -- is this for the plate? Thank you. Granvel Block who is also for this plate.

MR. BLOCK: I appreciate you hearing me. I'm Granvel Block. I am the present commander of the Sons of Confederate Veterans Texas Division. I've got a little something written out. Basically, Ray and Commissioner Patterson have covered a majority of it, but I'd like to make a few points that maybe we haven't been considering.

The decision that you are about to make is not whether or not you or anyone else personally likes or dislikes the plate design submitted by the Texas Division of the Sons of Confederate Veterans. It's your job as good stewards of the people of Texas to ensure that each application is processed by the same rules. Our application has met all previous requirements and our plate design has passed the TxDOT public opinion poll or we wouldn't be at this stage of the process.

The Sons of Confederate Veterans is a non-profit, non-political organization that is open to all male descendants of Confederate veterans, no matter what their race or nationality. As a 401(c)3 organization, Texas Division is limited by the federal government on how

we can raise funds for the work we are charged to do. The sale of these plates would not only benefit our projects but also the much needed restoration of many maps and documents in the care of the Texas Land Commission.

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Our organization was established in 1896 by the original United Confederate Veterans organization and our logo was created shortly after that founding. It is not unreasonable for the Sons of Confederate Veterans to request a specialty plate bearing our federally approved corporate logo, as so many other organizations and corporations have done before us.

At this time there are nine states that have approved specialty plates with the SCV logo as part of its design: Louisiana, Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland and Tennessee. Unfortunately, the fate of three of these plates had to be decided in court: Maryland, North Carolina and Virginia. In all cases the decision was in favor of the SCV license plate.

To expect the Sons of Confederate Veterans to relinquish or to refrain from the use of our federally approved logo on a specialty plate intended to acknowledge our organization funded completely by our membership would be as unreasonable as expecting the University of Texas to remove their logo from a plate because Texas A&M graduates

didn't care for it, or to ask Texas Christian University to remove the word Christian from their plate because a non-Christian didn't care for that. Obviously, none of these scenarios would be reasonable or legal.

Many groups and organizations with similar characteristics have been allowed these plates, the precedent has been set. I ask you to vote yes for the Sons of Confederate Veterans specialty license plate.

Thank you very much.

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MR. VANDERGRIFF: Are there any other speakers wishing to testify for this plate? Testifying for this plate?

MALE SPEAKER FROM AUDIENCE: I rise as a point of clarification on what Commissioner Patterson has stated. My name is Captain Paul J. Matthews and I'm here to speak on 5.A, but I need to clarify a couple of comments that he made. I will decline from my 5.A if I need to.

MR. VANDERGRIFF: If you'll fill out a card and we'll call you in turn. Thank you very much.

We have a number of speakers against this, I have approximately 20 cards. I believe a light flashes, I'm not sure if the speaker can see the light flashing at five minutes, so please be mindful of that.

The first speaker that we have today actually

is a written letter that I think is appropriate. We have a number of letters that have come in from members of the Texas House and Senate speaking against the plate, and those have been provided to the board members and will certainly be available to the public, but I do have a special request, and I have agreed to do this, from Representative Ruth Jones McClendon. The members of this board will note, and I know they know this, she was the sponsor of the creation of the Texas Department of Motor Vehicles and fought hard for the creation of this agency and also continued the legislative needs of this agency in the previous session of 2011, this year, and she wrote me a letter which has been provided to the board members.

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"Dear Mr. Vandergriff and Board Members, It is my understanding that the board members of the Texas

Department of Motor Vehicles have posted an agenda item for your November 10 board meeting to consider the approval of proposed specialty license plate displaying the image of the Confederate flag. I urge you to give this matter your most careful review of the legal and policy ramifications associated with this matter before making a final decision. I request that you read this letter into the record of your proceedings.

"Displaying this symbol on an official Texas license plate would have a highly inflammatory and

negative impact across the state. Before this plate is endorsed as an official action by the State of Texas, I urge you to consider fully the legal impact of state action since the outcome is likely to elevate the risk of hate crimes based on race and encourage numerous road rage incidents on our public highways and streets.

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"The decision before you is not about prohibiting any individual from expressing their own viewpoints or ideas because they are offensive or disagreeable to the public, this is a matter of asking the State of Texas to endorse those viewpoints and publish them globally on the state's license plate website. This suggests that the state endorses the individual's viewpoint. That is not the kind of government action we need in authorizing specialty vehicle license plates.

"The Confederate flag is an image that carries more than one meaning. While to some persons the flag may symbolize a portion of history of our nation, the overwhelming meaning of this flag promotes the undeniable image of racism and oppression. Texas is a proud state with a global identity. We should not participate in any state action creating a state-sponsored emblem that glorifies the image of a slave state view of history. Taking this action would ignore the many ways before, during and after the Civil War in which racism helped

promote a system of supremacy and dominance over other individuals who were different because of their skin pigment.

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"I urge you to deny any request to create a Texas specialty license plate displaying the Confederate battle flag on it. Texas has no need to return to the days where persons of different skin colors were rejected socially, economically and publicly as lower class citizens. We should move forward together as one people of Texas, one of the 50 proud United States of America, and reject any actions by our state government that divides Texas and Texans. Sincerely, Ruth Jones McClendon."

With that, I'll come to the speaker cards, and the first card is Gary Bledsoe.

MR. BLEDSOE: Thank you, Mr. Chairman, members of the commission. I want to commend all of you for being here today and give us the opportunity to speak on what we feel is an extremely important issue.

We stand before you as citizens of the State of Texas and citizens of this great nation, and as you look behind you, there are two flags that we all support and can come together behind. We're involved in very difficult times abroad and within this nation as we try to get our economy together, as we know, and it's important

for us to come together as a nation and not continue to have the fights that we've had for so many years.

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It is disrespectful to people of African descent to suggest anything other than that this flag is extremely offensive. Let's talk a couple of things about that flag so maybe all of us will truly understand what it means and what it represents. First of all, the flag did not fly over Texas. The Texas Historical Commission Archives Department of the State of Texas have indicated that, and in their own state documents, they say that if you're going to use a flag to symbolize the Confederate Government in Texas, it gives you three flags, and you can to on the internet and find that now, and I provided all of you copies of that last month, and none of those three flags include this particular flag.

So therein lies the question: Why is it that we must have this flag, this flag that, according to the Southern Poverty Law Center, has been adopted by over 500 different hate organizations. Look at this week's issue of Time Magazine, and we'll provide copies to all of you, and they show where the Klan adopted this flag and it's become a symbol of the Ku Klux Klan. It shows a compound of the Klan with this flag flying overhead.

When you go to the Souther Poverty Law Center website and you research their intelligence reports, you

see that though there are good people in the Sons of Confederate Veterans, there are many there who are appended to or connected with other hate organizations, and that indeed, there is an agenda afoot in pushing these issues, that it's not about in any way southern heritage, so we have to take note of it's not what it appears to be in that regard.

Now, when we see that flag, that flag is going to cause a breach of the peace. You cannot consider that flag to be the same as other flags. When an individual bears that flag, oftentimes they're likely to do harm to other people, and that's a serious problem. We know that one of the men who, for example, murdered James Byrd, Jr. had a tattoo of that flag. We know that flag is a true symbol of people that hate. Number two, besides the individual who uses the flag and has the flag, those who see the flag are likely to be disrupted and it could cause disruptions. It causes emotional harm. It's indeed a serious, serious problem.

And let me just say a couple of other things here. I'm glad that this is a bipartisan issue. We want to commend the governor for coming out and the governor, even though he's got Confederate roots in his own family, has said that it's time to move past and not raise up old wounds, and that indeed is the appropriate and the

wholesome thing to do. And we know when we look at the bipartisan efforts, when we have Congress people like Sheila Jackson Lee, Lloyd Doggett, Alexander Green opposing this plate, and we have state senators like Senator Royce West, Senator Rodney Ellis and John Carona, we can see we've got Republicans and Democrats who are reaching out to you saying this is the wrong thing to do.

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We want to set Texas up as an example of what states ought to be like. We don't want to have this to look like a state that people look at with scorn and ridicule and think that we're country bumpkins down here, because indeed, this flag is very offensive, it's likely to lead to breaches of the peace, it is extremely different from others.

And the other point besides the breaches of the peace that are likely to occur that I really want to stress on you is when you see this flag and you're African-American, it cause serious emotional distress and mental anguish, and so there's harm that occurs with the individual, particularly when the license plate is involved. And also, we look at the Anti-Defamation League and other organizations, the Anti-Defamation League is squarely opposed to the use of this flag. The Anti-Defamation League says this is clearly a flag that has been adopted by hate groups, and indeed, it is.

This flag is not about the Confederacy simply and alone, this is part of a massive strategy that took place in the early part of this century, and that strategy was one that -- and I guess my time is over -- this strategy was one that went well beyond southern heritage. Southern heritage, and some may be well-meaning when they say that, but southern heritage is basically a cover here.

And let me just say here that the Buffalo Soldiers are not comparable in any way. The Buffalo Soldiers fought under the flag of the United States of America, they wore the uniform of the United States of America, and if you follow the argument that the Buffalo Soldiers should not be given a plate, then you have to say that Andrew Jackson should not be honored, or other Americans that we all honor, and so that is not logical to me. There's a big difference in fighting for the flag and against the flag.

Thank you very much.

MR. VANDERGRIFF: I'm going to start to enforce that time limit. I appreciate very much the points people are making.

I've had a request, and I'll certainly honor this, that we have United States Congressman Lloyd Doggett here and he wishes to speak next.

MR. DOGGETT: Thank you very much, Mr.

Chairman, members. Thank you for your thoughtful consideration of this matter and your public service.

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years after Travis County followed the lead of Sam Houston and voted against seceding from the Union that we're still debating that matter. Normally at this time of year, and probably it will happen tomorrow, Commissioner Patterson and I stand from our different political perspectives speaking in unity in support of our veterans on the south steps of the Capitol, but I do disagree with him today.

I believe the problem is not that there was a time in our nation's history when even Abraham Lincoln held the views that were quoted, but that during my lifetime a very substantial number of Texans still held those views. They were the Texans who supported the billboards during my childhood that dotted I-35 and other highways through the state showing Martin Luther King at communist training camp and resisted the effort to give all Texans opportunity within this state. And sadly, there are still a few who have those views.

We've heard, and I appear at the request of the NAACP to oppose this plate because it is divisive. It doesn't mean that everyone who is interested in the flag, is interested in Confederate re-enactment, in honor service of people from the past is racist or divisive, but

it does mean that some groups in this century have adopted that flag as a symbol of division.

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About the only worldly possession that I have from my grandmother is this old daguerreotype and it shows her grandfather in his Confederate uniform with his saber and with his pistol. I feel I can remember his past and thank heavens that he failed in the cause of dividing our nation, and what a weak nation it would be if he had been successful, that I can honor that past as the great-grandson of a Confederate veteran without doing something that is divisive and hurtful to too many of our neighbors, and I would respectfully ask you to not approve this plate and let those who want to honor this past honor it in different ways that don't hurt our neighbors.

Thank you very much.

MR. VANDERGRIFF: Jeffrey Travillion.

MR. TRAVILLION: Good morning. I appreciate the opportunity to stand before you and to have you consider a perspective, because for me this is a question of conscience and perspective. It's almost deja vu for me.

As I was installed as the local NAACP president here in Austin about 20 years ago, my very first press conference was a response to a former mayor of Austin, who should have known better, who was opening up the

convention center, and he wanted to open it up under a theme of Plantation Days. In 1991 he did not understand how hurtful Plantation Days might be to parts of the city where people had been excluded by city sanction, by a city ordinance that divided this city in quarters.

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It shows a lack of a sense of history and how history impacts us. People are free to believe what they choose to believe, and I understand that, but not with the sanction of the state. It seems to me that we need to truly understand the implications and fully understand what symbols mean to communities. It begs the question: Where do we learn about what the Confederate flag means, what the Confederate battle flag means to us? Is that something that is discussed in our public school curriculum? How many people have actually read the articles of secession, February 2, 1861, and what was said about the African-American community by folks that were leading the state?

It is important to understand that this is a significant symbol to folks, just like a cross burning. It is a significant symbol, and it makes me wonder whether people understand what it means to have an elderly black grandparent who's gone to a bank to make a transaction, the banker calls him by his first name, half his age, and expects him to call him by his full name, Mr. So-and-so.

Does anybody understand the time period that we're talking about where I used to try to register people to vote that lived in public housing that were afraid that they might be put out of public housing if they registered to vote, to be full class citizens of this state.

It's important to recognize the damage of this symbol and what it means, and hopefully people of conscience and people of understanding can come together and say this is not the right time for this symbol in this state.

Thank you for this time.

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MR. VANDERGRIFF: Senator Royce West.

SENATOR WEST: Mr. Chairman and members, thank you very much for giving me this opportunity.

I'm not going to be redundant, but what I want you to think about, if you've ever called an African-American man a boy how that resonates with him, and the reason it resonates as a derogatory term, the roots go to the Confederacy.

The Journal of the Secession Convention of

Texas in 1861, I want to read this to you: "We hold as

undeniable truth that governments of various states and

the confederacy itself were established exclusively by the

white race, for themselves and their posterity; that the

African race had no agency in their establishment; that

they were rightfully held and regarded as an inferior and dependent race, and that condition only could existence in this country be rendered beneficial or tolerable.

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"That in this free government all white men are and of right ought to be entitled to equal civil and political rights; that the servitude of the African race, as existing in these states, is mutually beneficial to both bond and free and is abundantly authorized and justified by the experience of mankind and the revealed will of the Almighty Creator, as recognized by all Christian nations; while the destruction of existing relationships between the two races, as advocated by our sectional enemies, would bring inevitable calamities upon both and desolation upon the 15 slave-holding states."

Members of this committee, when you think about what's happening, whether it's ill-intended or not, why should we as Texans want to be reminded of a legalized system of involuntary servitude, dehumanization, rape, mass murder?

At the time when we had the James Byrd incident in the State of Texas, I was heading up a committee in the State Senate, appointed by Bob Bullock at that time. I had an opportunity to look into that particular matter.

We had Texans with tattoos with men hanging from a tree

and the use of the Confederate flag. That's not what we're trying to do in the State of Texas, we're trying to bring people together.

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And I the governor, who I stood up for, when there were those who were saying is he a bigot or a racist, as a result of that ranch here in Texas, and I said absolutely not, our governor is not a racist or a bigot. I'm proud of the governor, even though we have our political differences, when he stood up and said to you that we shouldn't move forward with this license plate. I'm proud of my other colleagues on the other side, John Carona and others, who said similar. This is not right for the State of Texas.

And I'd ask you, as you deliberate on this, think about the implications and ramification for this entire state, and I'd ask you to consider what the flag symbolizes in making your decision.

So on behalf of the citizens of the State of Texas, both African-American, Latino, Anglo, Asian, I ask you to oppose this item and I ask you to do what's right, and that is bring citizens together as opposed to further divide us. Thank you.

MR. VANDERGRIFF: Matt Glazer.

MR. GLAZER: Let me start by saying it's an honor and privilege to be speaking to you on behalf of the

25,000 Texans who have signed petitions advocating against this image being endorsed by the State of Texas.

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The Sons of Confederate Veterans have been down this path a few times now, as many of you are aware. They have petitioned you all, they have talked to the Texas Department of Transportation to allow the Confederate flag to be added to our state plates. In the past, TxDOT used a two-pronged standard to judge whether a plate should be endorsed by the State of Texas. This was confirmed today by the Austin American Statesman. If the plate was controversial or litigious, the plate would not be approved.

As we discuss this today, we can easily see that this plate proposed by the Sons of Confederate

Veterans is both controversial and litigious. The Sons of Confederate Veterans and Land Commissioner Jerry

Patterson, the sponsor, have been quoted as saying the plate will likely go to court, just as it has three other times. They have said in the San Antonio Express News, the Austin American Statesman, their supporters have emailed us personally to let us know, they have talked about it on conservative talk shows, and they have said it here in front of you today.

There is no question that this plate is controversial. You can find opposition of this plate not

only in this room today but on the editorial pages of statewide newspapers, the letters to the editor, and I'm guessing in your email boxes, or on the petitions we submitted during our last meeting from 22,000 people at the time. That number continues to increase. The image being submitted elicits strong emotional responses from supporters and detractors alike. Hate groups rally around this iconic image and as long as that is the case, we cannot as a state endorse this image. The Sons of Confederate Veterans argue that the Confederate battle flag is part of Texas history, but the Confederate battle flag never flew over Texas. It flew in Texas, it never flew over Texas. The Texas Historical Commission identifies three flags that flew during that Confederacy: the stars and bars flag which you can see if you go to Six Flags over Texas, which you can see at the Capitol Building; the stainless banner flag; the second version of the stainless banner flag, and that's it. Never was the Confederate battle flag, as being proposed today, as a stand-alone flag flown over Texas in any official capacity. Why then in 2011 would the state sanction the Confederate battle flag when Texas didn't even do so during the Civil War.

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While cities in Virginia are passing ordinances saying the Confederate battle flag can't be flown on

state-owned flagpoles, and states like South Carolina and Georgia are openly discussing ways to scale back this exact image, we are discussing expanding the use of this hateful racist relic. It is unacceptable for Texas to regress and show racial insensitivity at this level in any way.

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This is a non-partisan issue, as you've heard.

John Carona, the ranking Republican on transportation
issues, called this a symbol of slavery, racism and
defeat, and says those who are advancing such a plan do
not reflect the sentiments of most Texans. State
Representative Garnet Coleman has said, There are simply
too many painful memories, fearful references and negative
connotations associated with this image to allow its
placement on state-sanctioned license plates.

So we stand opposed, over 25,000 Texans oppose this image, and we hope that you will vote against this plate today.

Thank you for your time.

MR. VANDERGRIFF: I'm going to continue to recognize the speakers. I certainly will recognize anyone that is for or against the plate, but would encourage you, as Senator West had done before, to not be redundant in the comments. We're going to let anybody talk, but to think that through, but if you would rather, instead of

speaking, just be for or against the plate, I'll be happy to recognize that and just please let me know.

The next speaker is Yannis Banks.

MR. BANKS: I definitely will try not to be redundant because I never like to be redundant.

Good morning. My name is Yannis Banks. I'm here for the Texas NAACP, and I talked to you, I think it was last month, about how we fell and the concerns about the Confederate license plate. And I did miss some of the stuff that was said before, so please forgive me if I am redundant, I've been in and out of the room. But we do have concerns with the license plate being passed.

Governor Perry did say earlier that this is just not a part of history, that we do not need to scrape the wound again, it just doesn't need to happen. I heard Senator West mention Senator Carona who also said, No one wishes to deny our history as a state but we as leaders to take every opportunity to support that which unites our citizenry. Reminding those among us of their painful past has no place in celebrating our great state. I think that says a lot.

We want to make sure the Texas is open and welcome to people, but when you see this flag, as has been said before, which is hurtful and harmful to people in the African-American community, and not just them, others in

different communities as well, whether it's Latino or Anglo, it's a hurtful and harmful symbol of what's happened in the past, and we don't need to have a symbol like that on an official state document, as I said before.

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We want to do things that is going to unite and bring people together in the state as we move forward to try to help and make Texas the great place that it can be.

We want to make sure that we don't remind people or have something that says Texas supports the flag or what it stands for, what it has done in the past. We want to make sure that when people come to Texas and they see what is here in Texas that they are open, and Texas is a place that's welcoming to everybody and we want you here, whether it's business or personal or vacation. We wouldn't want to have something that would blacken the eye of this great state.

So I definitely encourage you to vote on approving this license plate because, like I said, the flag, whenever we see it, it lets you know that you have to walk lightly and be careful where you are. It's something I've known all my life being home is North Carolina and my Pops being in the military, so we traveled around all over the states from Alaska to Hawaii to Panama to here in Texas and North Carolina, no matter where you go, you know what this flag stands for and what it means.

It stands for terrible things and it's definitely something you don't want to have people seeing and reminded and seeing the seal of Texas there with it; it sends a bad message to people.

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So definitely want you to vote no on this, and I thank you for your time.

MR. VANDERGRIFF: David Edmondson.

MR. EDMONDSON: I'm here on behalf of Senator Rodney Ellis, and this is a statement he's asked me to read on his behalf.

"I ask that you vote against approval of the proposed Sons of Confederate Veterans license plates. The State of Texas should not sanction what has become a symbol of hatred and racism.

"Since your April meeting there has been a great deal of public outcry regarding the plate's reconsideration. Religious, political and civil rights leaders have joined a chorus of voices across the state in opposition to the plates. Governor Rick Perry has also expressed his concerns, stating that we opposes the plates because we don't need to be opening old wounds. I agree wholeheartedly. The Confederate battle flag has become a symbol of repression and violence, not heritage, it provokes feelings of fear and intimidation amongst far too many Texans.

"Instead of the battle flag, some refer to it as the flag of the Army of Northern Virginia, then let Virginia have it. The flag never flew over the Texas Capitol and it's not one of the six flags of Texas. It was, instead, adopted by the segregationists as their symbol of hate and opposition to civil rights and equality in the South. This is not a symbol that is worthy of the state's honor.

"Again, I urge you to vote against the proposed plates."

Thank you.

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MR. VANDERGRIFF: B.J. Williams.

MR. WILLIAMS: Good morning. Thank you for this opportunity to appear to the Honorable Chairman Victor Vandergriff.

Let me begin my three minutes with a quote that I think you'd recognize. I pledge allegiance to the flag of the United States of America, one nation, under God, indivisibile, with liberty and justice for all.

I come this morning, leaving Garland at 3:00 a.m., as president of the Garland branch of the NAACP representing Garland and the North Texas community, to urge you to vote no on this request for several reasons quickly.

My hometown is Shreveport, Louisiana, and I'm

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proud to say today that tomorrow two weeks ago I was in Shreveport, the citizens of Shreveport came together and lowered the Rebel flag from the Paris Courthouse after 61 years, after 61 years. So we urge you to vote no, follow the model of the people of Shreveport for these reasons.

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The Rebel flag represents the darkest and the most dehumanizing period for African-Americans in the history of the United States. Public display of this symbol of hate, human servitude will add to and intensify an already toxic and viral political as well as social climate in our great nation and state. It will have a negative impact on our ability to attract and retain quality businesses and progressive thinking families to Texas.

This Rebel symbol is highly divisive and inflammatory. This Rebel symbol is highly offensive not only to African-Americans but to all Texans who value and respect the dignity of their fellow citizens based on the content of their character rather than the color of their skin.

And finally, to Commissioners Palacios, Walker, Ingram, Flores, Vandergriff, Butler, Rush, Ryan, Rodriguez, let me leave you with this analogy. Would you decorate the bedroom of a 12-year-old boy with an 8x10 picture of a Rottweiler who previously witnessed his

grandfather being attacked by a pack of Rottweilers?

Thank you for your time.

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MR. VANDERGRIFF: The next speaker, now we're on the same page, he's requested to go next and his card was actually up next, and that's Reverend Sandy Jones.

REV. JONES: Good morning, Chairman and other members of the committee, and everyone that's here this morning. My name is Reverend Sandy Jones and I've been a resident of Austin, Texas since 1984. I was raised in Alabama, I've seen crosses put in our yard. My grandmother was on the Edison Bridge when they had the march in Selma, Alabama, but I stand here before you today to talk reality, to ask you not to vote for this symbol to be put on this flag. Let us not reopen evil thoughts.

What we are dealing with here is like a person on drugs or alcohol trying to get off to it. Every time you talk about it or see it, if you are not strong enough not to use, you will, the thought is there. So we're saying here if they see it, the evil thought is going to be there if they're not strong enough. The same applies here every time someone that's not strong enough or do not understand see this flag tag symbol on someone's car, it will cause them to think evil about the person driving the car because of its past representation.

We need to keep the minds and hearts of the

people clear from evil thoughts, not to allow this thing to resurface in our society. We need to be building strong minds, good hearts, instilling love, peace in the people for a better people, for a better community, for better towns, better cities and better states, and for a better country and a better nation, and for better relationships. We should not allow this reminder to be put in the eyes of our people to cause evil thoughts in and among our people.

We already have a flag that flies, let it be the only flag that flies or rides in the State of Texas and in the United States of America. If you let the devil ride, next he's going to want to drive flags that you vote against.

Thank you.

MR. VANDERGRIFF: Reverend Ray Hendricks.

REV. HENDRICKS: Chairman Vandergriff and to this board, I just want to mention that I am a pastor here in the City of Austin, and there's a group of pastors here, and I won't be before you long because most of what I would have said has already been said.

But I just want to have you all to help us. We as pastors and ministers, we are forced to deal with the problems that exist as a result of racism that's present, and some say alive and well, I say alive and sick. We're

forced to deal with these problems, and all I want to say to those of you that are here is that we're in the business of building and rebuilding lives and families and communities. We're just asking you all to make the right vote and vote against this and help us help the citizens of Texas so that we can help heal things that have happened in the past so that we don't again reopen the wounds. You must do the right thing or God is going to hold each of you also accountable.

Thank you.

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MR. VANDERGRIFF: Reverend Richard Carter.

REV. CARTER: Good morning. Let me thank you for this time to address you.

I'm almost in awe or in disbelief. I pastor a church here in Austin, I am a native Texans. I joke with fellow ministers that ask me have I ever pastored anywhere other than Texas, I say: No, I'm Texas born, I'm Texas bred, and when I die I'll be Texas dead. I never thought I would see the time that we would have to convene a meeting like this to decide whether to put on a license tag what I call hate agenda, and for the State of Texas to consider endorsing it.

I believe in personal rights, individual rights, but I do not expect the State of Texas to support my personal or individual rights when they harm and hurt

others intentionally. And so I'm really amazed and somewhat embarrassed that it had to come to this and that we as a state are considering, even considering doing something like this.

Thank you.

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MR. VANDERGRIFF: Reverend A.W. Mays.

REV. MAYS: Good morning, Mr. Chairman and members of the board. I'm A.W. Mays, I serve as a local pastor here in the city. I am here because it represents for us the very height of insensitivity to dismiss our feelings and to dismiss the controversy associated with this symbol by simply saying get a grip or to get over it. It runs too deep and it's too serious a matter to be dismissed without logic or reason.

I believe that, as has been stated, that the state's endorsement and sanction of the ideas associated with this symbol would be most tragic. It would be a return to a time that I believe none of us would want to return to. There is a simple understanding about what this represents, and I believe that it's clear to all and it will not be covered up by words of complication. I believe that with good conscience those that view what the history is will understand that you cannot, in good conscience, support and endorse this symbol being in public display endorsed by the state.

I would have this to say and to share, praying that you will oppose this action and understand that this represents more people standing against it than more people standing for it.

Thank you very much.

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MR. VANDERGRIFF: Reverend Terry Preston.

REV. PRESTON: Mr. Chairman and the committee that are seated before us, I am Pastor Terry Preston from Houston, Texas and I represent the Elite Ladies of Expression here today. We're here because, first of all, we love our great State of Texas, and as well, we are here to ask you to vote no.

I'm here to ask you gentlemen of the Department of Motor Vehicles Board to take us forward and not backwards. Please vote down the state-sanctioned use of a racist relic. Please do not put this hateful image of the Confederate flag on our state's license plate because it takes many proud Texans back to the days of conflict, Civil War and racism that plagues America and the South.

So we say to the Sons of Confederate Veterans let this issue be put to rest, let's move forward and please allow Texas to maintain its rich legacy by not embarrassing our state with this Confederate flag on our license plate.

I say to you thank you for the privilege to

address you, and please consider our request.

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MR. VANDERGRIFF: Tara Long.

MS. LONG: Good morning. I'd like to say hello to Sheila Jackson Lee, who invited us to come. I'm the legal advisor for the Elite Ladies of Expression. We're a non-profit organization that advocates for women, women who are either first-time offenders or women who are leaving prison to reenter society with their heads held up and try to do right, try to make a change in their life. And with that I say, representing the ladies and gentlemen that are here with me today, that we are against putting this flag on the plate. We feel that we want to represent out state in the best way possible.

I'm originally born and raised in Mississippi and am proud to say I am a Texan. I am a graduate of Rice University and Thurgood Marshall School of Law, and I feel that we as Texans have risen above past harms, such as Juneteenth, to a higher level. We commemorate the fact that we are free and Texas did announce, although late, that the slaves were free here, and putting this on a license plate takes away from the celebration that we have every year and brings us back to a level of remembering that we were oppressed. So we ask at this time that you vote against it and we appreciate your time and energy.

Thank you.

MR. VANDERGRIFF: Courtney Crayton.

MS. CRAYTON: Thank you so much for the opportunity to speak.

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I have thought long and hard on what it truly means to be an American, I've thought long and hard on what it means to be created equal. Many days I've wondered to what extent I am entitled to life, liberty and the pursuit of happiness. I know what those things mean to me today. I can only provide a guess as to what they meant to Thomas Jefferson or Abraham Lincoln. I can only quess what those words, those symbols mean to people that hold memberships in organizations such as the Ku Klux Klan and other hate groups, but they must not mean the same thing as to me because those members have concluded that I am less than, that I am beneath, that I am unworthy of those rights, unworthy enough to hang me on a tree, beneath enough to burn down my home, so much less of a human that it is acceptable to drag me from the back of a truck until my death.

I do not know what those pillars of America mean to them, I do know, however, the power of symbols. I know that in history white sheets were used to intimidate and frighten my ancestors, that a noose was used to evoke fear among them, and that the Confederate flag was a symbol of hate to show them they weren't wanted, that they

were less than, beneath and unworthy.

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It's no secret that generally history is written by the winners. When first learning of the Civil War and the Confederacy so many years ago, it was taught that it had everything to do with slavery and right winning out in the end. As I became more educated, or so I thought, the information was provided to me that the Civil War was fought on the sole basis of state's rights. I would agree with that with one addition. The Civil War was fought on the sole basis of a state's rights to own slaves, to own people. The people that waved that flag were people that waned to keep me and people that could be placed in a group similar to me in the mind frame that I am less than, beneath and unworthy.

So I stand before you a student, looking for hope that the place I call home will not reject me, I stand before a Texan unwilling to ignore the symbol of racism that encourages separation and discourages progression, asking you to vote against the allowance of the Confederate flag to be a symbol on any Texas license plate.

Thank you.

MR. VANDERGRIFF: Dr. Richard Watkins.

DR. WATKINS: Mr. Chairman, Board, thank you for this opportunity. I will not be redundant, I'll be

expeditious, but I'd like to share with you about two native Texans who happen to be African-Americans, born and grew up in Huntsville, Walker County, Texas. Both went off, got educated.

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One became a minister, served not only the state, but the nation as an encourager, a supporter, development person who encouraged togetherness and not separation. The other cousin became a teacher, taught in East Texas until World War II broke out, volunteered at a late age, was denied initially, went back to his doctor, got a report, was accepted and went to OCS and became an officer. That person served in three war periods: World War II, Vietnam, and when one of the sons received orders to go to Vietnam, he volunteered, he served in Vietnam. But that minister became the first African-American appointed to the Texas Department of Corrections, Reverend Carranza A. DeHoliday, a unit named after him in Huntsville.

The other cousin went on to serve continuously in the military and subsequently in the Department of Army Civilians as an education advisory. This officer came back on leave, had a family in Walker County but wanted them to go back to Europe with him, and he made this profound statement: I refuse to live in a state and a nation where the enemy treats me better than my own

people. During that period there was prisoner of war camp just east of Huntsville. German prisoners were allowed to come into Huntsville and go freely into the restaurants and eat and have coffee, but he, a decorated military officer, who loved his state and loved his country, was denied that right.

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Well, in closing, his three sons and his daughter all served in the military because he shared with them the great love that he had for this great nation, and it is a great nation, and the great love that he had for this state until his death. But he lived, he died, his transition was made in Germany and that's where his remains lie today. But out of those children who all served honorably in the military, he had one to serve as a combat helicopter pilot and he shed his blood for this country.

MR. VANDERGRIFF: Nelson Linder -- oh, okay, Representative Senfronia Thompson.

Mr. Linder, I'm sorry.

MS. THOMPSON: Good morning. Thank you very much for letting me come. I'm not going to be redundant either, but I would say this, that I know that we're probably dealing with an issue that falls within the ambit of the First Amendment, but let me admonish the committee that the First Amendment has exceptions, and I'm hoping

that you'll be able to see these exceptions.

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I know you've been hearing a lot of conversation this morning by the various speakers talking about things and events, and it may be difficult for you to understand, and I know how hard that is when you have not walked in another person's sandals. But I have lived through segregation, I've lived through a lot, and even serving as a state representative in this body, there was a time that I could not even come on the grounds of the Capitol because I was black.

I now serve in the body, and it's very difficult to be able to see these symbols because they bring back memories, and to me, it's like sticking poop in the face of black people every day to see them, that's how repulsive it is, that's how terrible it is. You may not understand that because you have not had the privilege of walking in my shoes. But I have walked in these shoes for 72 years, and let me tell you something, it has not been easy.

We have made a lot of strides within this state and it is known across the nation as being a great state. Let us keep the greatness of this state where people can remember the greatness of Texas and not the negative things about Texas and not wipe poop in the face of black people each day.

I ask you to vote no, and thank you very much.

MR. VANDERGRIFF: Please go ahead.

MR. LINDER: Thank you, Chairman. I am going to basically support the sentiments of my president, Mr. Gary Bledsoe, but I do have a personal testimony and a narrative. My name is Nelson Linder, I'm the president of the Austin NAACP.

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I was born in central Georgia in 1958, I'm not that old, but I want to tell you a story about how this issue affected me because I think somehow I'm getting the impression here we don't really sense or see what we're really addressing.

When I was ten years old we walked to school, to the black school. There was a white school where the white kids rode the bus, there was another white school that was a private school, and every morning as we walked on the sidewalks as black people, the white private school would ride by in their bus very slowly, spit out the window in our faces and display a Confederate battle flag. Every year in our school when they talked about the death of M.L.K., the white kids would bring in the Confederate battle flag and hold it up as a symbol of power.

All my life in Georgia and Alabama and the whole South, it was very clear what the symbol meant. In fact, if you study the history of Georgia and Alabama, you

see crimes scenes where black folks were lynched, murdered and killed, and other relics like the flag were always on display. This is a very serious issue. I'm only 52 years old, I'm not that old, I recall those incidences where folks would show their flags.

And the final incident that you might want to recall, when I also was ten years old, I had a classmate named Michelle Ottler, her father was running for city council in Rossville, Georgia, he was the subject of an attempted assassination with a 30-06 rifle. They shot in his house, almost killed her, and when they left the scene in Rossville, Georgia, they killed an innocent family with a head-on collision. One of their symbols: Confederate battle flag.

This flag is part of America's racist, didactic, uncivilized history. It's full of death, destruction, fear and chaos. It has no place in any civilized state or nation

And if I may, a final assignment for you, there's a fil called "Without Sanctuary" by a fellow named James Allen. It tells the history of lynching in America. You might want to see that because when you see the actual lynching, the killing, the murders of black people, these same relics of the past always seem to reappear. This is bigger than symbol, it's not just a political

issue, this is about being a decent state and a decent nation at a time when our very soul is being questioned.

So I want to encourage you to do the right thing, but also understand what this issue really means. It's about decency and human civilization.

Thank you very much.

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MR. VANDERGRIFF: Reuben Bell.

MR. RODRIGUEZ: Mr. Chairman, at what time would it be appropriate to call the question on this?

MR. VANDERGRIFF: I think when we get through the speakers. We have about four left, or five left. We also have a couple of people who have a point of interest.

MR. BELL: Thank you, Mr. Chairman, for this opportunity to speak before you, and to those that invited us here, the Unified Veterans of America, Inc.

The Unified Veterans of America, Inc. was formed simply because of the fact of the outcry from the veterans community to have an organization that is unified regardless of time in service, race or certain other things considering our service, and so we were formed and now we are one of the fastest growing organizations there is.

We certainly oppose this flag or this symbol on our license plate. First of all, it's inflammatory to non-whites, it's also inflammatory to poor whites, and

it's inflammatory to Jewish. We are against this symbol because it is a symbol of division. As veterans, we served honorably to promote a safe and unified nation, we fought under the United States of America flag, we died under the United States of America flag. We are not in support of this flag because of its inflammatory image.

Thank you.

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MR. VANDERGRIFF: Steve Miller.

MR. MILLER: Thank you, Mr. Chairman, members of the board. I come in the name of Christ.

There's a book here that I hold in my hand by the author by the name of Richard J. Foster, it's called "Celebration of Discipline." It's a book about how you can become closer to God, it includes fasting, praying, submission, it's learning how to practice those spiritual disciplines to become closer to God.

Mr. Foster, when he did his doctoral dissertation, he wrote about how the institution of slavery is and was demonic. If this was a swastika, would we even be having this conversation? Because I submit to you that this emblem and the swastika are exactly the same, they are one and the same.

I'd like to let you know that the Confederacy and German were one and the same. In both they enslaved people, in both they murdered people, in both they raped

people. African-Americans coming to this country were very dark-skinned people. I owe my light skin to the fact that one of my great-grandmothers were raped by their white slave-holders.

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I am the father of a daughter. I do not and I wish not to have my daughter or my son, as they ride in their cars with their parents, come behind, stopped at a light of a car with this symbol on its license plate so it could remind her of how her great-great-great-grandmother was raped by her slave-holder.

This institution is a demonic one, it is not Christian. Anything having to do with Confederacy has nothing to do with Jesus Christ because Jesus Christ says the fruit of the spirit is love, peace and joy. The very fact that all these people are here represents the fact that there is no love, no peace, and there is no joy in this room because there is division, and that is wrong. Jesus Christ died on the cross for the love of us. He said, You can have this, you can have that, you can have this, you can have everything in the whole wide world, but if you don't have love, you have absolutely nothing.

In my hometown in East Texas by Tyler, Texas, a pastor friend of mine who taught at the First Baptist

Church, he spoke at the First Baptist Church which is one

of the most influential churches in my hometown, and while he was there talking to the senior pastor, his head deacon came to him and said, and I quote: Now that you've had this nigger speak in our church, I am moving my membership.

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Two months ago I was in church, I go to a very diverse church, and the pastor was speaking. The pastor is a white man married to an African-American woman. And while he was speaking, he made a statement about he said, You know, white people are beautiful, black people are beautiful as well. But he said, When black and white cross, that's God's idea of beauty, it's a photo-shop. There was a white individual sitting in front of me and he got up and he angrily stormed out of the sanctuary.

I looked at my wife and I said, You know, I hope he's not leaving for the reason that I think that he is. But I gave him a pass, I said he probably had something to do, he had something that he needed to do. So I let him go.

But one of the deacons in the church which is a white male, he went to talk to him to see exactly what was going on, and his statement was, and I quote: I am never coming back to this church again because I do not support reverse evolution. He expected to come to my church which is a diverse church --

MR. VANDERGRIFF: I'd remind you your time is up. Thank you.

MR. MILLER: Okay. Thank you very much.

But he expected to come to our church and have his sentiments reinforced at church.

Thank you very much.

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MR. VANDERGRIFF: George Clark. It's Reverend George Clark. I apologize.

REV. CLARK: Mr. Chairman and Board. I chose not to do any research on history, probably because I'm history myself, 82 years old. I've lived in Austin all of my life, served in the military, worked for the State of Texas, retired, currently pastor of church now for 42 years. I'm president of the state convention of a number of churches, so I still travel around the state. So what I say now is not just my feeling, even though it is, but it's the feeling of many around the State of Texas.

That this matter would come to surface at this moment represents to a lot of people an insensitiveness to what has been the experience of a number of citizens in the State of Texas. It's saddens me that the possibility exists that I might still be driving around the state and frequently see something that represents hate, something that has made people fell less than human, something that caused you in the past to drive along the highway and see

a Confederate flag where you need to stop but see the flag and you keep driving.

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years could tell you that all of my life has not been an easy moment, that I've had some challenges from some of the same people who represent the matter that's before you now, that the fear is still here. And for this to happen, should you vote the passage, there's a resurfacing of a lot of discomfort by a lot of Texans who love their state, as I do.

I trust and I hope that you vote against the proposal and that we not have to deal with it, not just today but anytime, and I feel like that's a false hope because I feel it's coming again. And I know, as has been stated, there are nine states who has allowed it to happen but this is Texas, this is my state, this is where I was born, this is where I worked, this is where I raised my children, this is where I taught school, this is where I pastor a church. Please vote it down.

MR. VANDERGRIFF: We have a couple of members of Congress which I certainly want to recognize here shortly, and our last speaker today is Joseph Parker. We have a number of other cards which I'll list off who've acknowledged that they are against this plate, and a few cards that just came in, and I hope the crowd will indulge

me that coming in an hour and a half late to the meeting, 1 2 I'm going to put those speakers as against the plate. 3 But the next speaker is Joseph Parker. (Speaking from audience.) Mr. 4 REV. PARKER: Chairman, please note my opposition for the reasons 5 6 previously stated, and I have no further comment. 7 MR. VANDERGRIFF: Okay. Thank you, Reverend 8 Parker. Our next to last speaker is Congressman Al 9 10 Green. MR. GREEN: Mr. Chairman, members of the 11 12 commission. I come before you today as a proud American. 13 I love my country, I love the great ideals, the noble ideals that make America the great country it is in the 14 15 world, I don't believe there's a country greater than my 16 country. I believe and love the words in the Declaration 17 of Independence: all persons created equal, endowed by 18 19 their Creator with certain inalienable rights, among them, life, liberty and the pursuit of happiness. I believe in 20 the words of the Gettysburg Address: Government of the 21 people, by the people, for the people. Which is why we're 22 here today. 2.3

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of the Pledge of Allegiance: Liberty and justice for all.

But I also must tell you I believe in the words

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And I believe that those who have gone to Afghanistan and to Iraq, those who have died, they didn't die for the Confederate flag, this is the flag they died for, Old Glory, Oh, say can you see, does that star-spangled banner yet wave over the land of the free and the home of the brave. This is the flag that they salute, this is the flag that I salute, this is the flag that bonds us together as one nation under God, indivisible, with liberty and justice for all. This is the flag that makes America, America for all Americans.

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And I just want you to know that as a Godfearing person who loves his country, I came here today to
support flag, this is the flag I came to support. And I
believe the people in this audience support this flag, I
believe the people in this audience will join me right now
in pledging allegiance to this flag, and I believe that
they believe so firmly in it that they're going to stand
right now and they are going to place their hands over
their hearts, and as they place their hands over their
hearts, I believe that they want to make it known to the
world that we love America. We didn't come here out of
hate, we came here out of love.

(Audience members stood and recited the Pledge of Allegiance led by Congressman Green.)

MR. VANDERGRIFF: Thank you, Congressman.

MR. GREEN: One final comment, if I may, Mr. Chairman, because this is important.

MR. VANDERGRIFF: Sure.

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MR. GREEN: Dr. King reminds us, Mr.

Chairman -- and I thank you being so generous, I will

consider myself as owing you one, if I may say so -- Dr.

King reminds us that the truest measure of the person is

not where he stands in times of comfort and convenience

but where do you stand in times of challenge and

controversy. To each person a watch is given, this is our

watch, and the question will be at this time of challenge

and controversy, where do you stand. There are always

those who take the wrong side of history for the right

side of politics. This is an opportunity to take the

right side of history and the right side of politics.

This is an opportunity to do what Dr. King said when he said, There are some questions where in cowardice we'll ask is it safe, is it safe for me to do this. There are some questions wherein expediency will ask: Is it politic, is this wise, is it prudent, politically expedient? And then vanity will ask: Will this make me popular. But the ultimate question Dr. King reminds us is what conscience will ask, and that is: Is it right, is it right? I ask you to do what Dr. King reminds us that the Creator of the Universe would ask us to do and ask

ourselves is it right.

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God bless you and God bless the United States of America. God bless you.

(Applause.)

MR. VANDERGRIFF: Our last speaker, before I acknowledge some of the other people who have come who are against the plate, is Congresswoman Sheila Jackson Lee.

MS. LEE: Mr. Chairman, thank you very much, and I would ask you to indulge me as I have waited patiently to allow me to, even with your rules, to allow Reverend Max Miller just a moment. He's traveled far and represents a body of people, you may be calling his name. I would like to yield to Reverend Max Miller for a moment and a word, if the chairman would be so kind.

MR. VANDERGRIFF: Yes. He had given me a card that he said he did not wish to speak but he was against.

MS. LEE: Is that correct, Reverend? And you are against it, that is correct?

REV. MILLER: (Speaking from audience.) I'm very much against it.

MS. LEE: Thank you very much, Chairman.

First of all, let me thank all of you for your indulgence, let me thank you for your service. Let me thank Representative Ruth Jones McClendon for her intuitiveness and genius to create a board that really

deals with working Texans. My understanding is, as a former member of the Houston City Council, it's tow trucks, it's automobile dealers, it's the working men and women of this great state, and I am grateful that they have a place to come and iron out differences and concerns.

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I chose this particular place in the agenda to act, in essence, as a rebuttal witness, to maybe answer questions that deal with the legal concepts that have been raised. And I am so glad that today, maybe for the first time in the history of this board, and you may correct me, that members of the state legislature came in a number of numbers. I must acknowledge again Senator Rodney Ellis, who is called to his district and was not able to be here, but I believe you have heard from him on a number of occasions.

Equally so, I think it is important to note that three members of Congress, who we recognize that our job in the United States Congress is to support you, to provide funding, to advocate for the State of Texas, to be your champion, and what a thought when colleagues of ours came and brought to our attention that this discussion, maybe because of the times, maybe because of the toxicness of what we're dealing with in Washington, maybe someone thought they wanted to do one-upmanship to tell us what

our state was doing, dealing with repeating or advocating for history.

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Now let me speak -- and I realize I have time here, but I ask your indulgence -- let me speak to the Sons of the Confederacy for it is important to acknowledge their dignity and humanity. I do not come here to get crossways with any of them and the respect for their ancestors. Let me frame the argument that my colleagues have made, and again for an indulgence, a number of people cited their affiliation. I think it is appropriate, and again, Mr. Chairman, if you would allow that all the men and women of faith that pastor churches, would you please stand for a moment, just if you would stand. And let me thank you that they obviously involve people from both sides of the position. Thank you very much. And I know you'll hear from Captain Matthews who is not a pastor but certainly nurtures the soul.

I asked them to stand because my colleague mentioned that we have seen men and women go into battle, as history has reflected. I've had the privilege as a member of the United States Congress to go to my soldiers in Iraq and Afghanistan. I have walked the place where they have fought, I have seen them in their bunkers. I have talked to young boys, 18 and 19 years old, wearing the uniform of the United States military. I've seen them

Latino, I've seen them Anglo, I've seen them Caucasian,
I've seen them Asian, I've seen them poor. I've seen them
coming out of the places of East Texas and West Texas and
urban centers. I've seen them first immigrants, with
mommies and daddies that don't speak the language, proudly
carrying the flag, recognizing that they fight for a
united nation.

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In the history that was recounted by our commissioner of Agriculture, he cited the words of Lincoln. God bless this nation that allows us to speak words that then we can reconsider, and many of you know his eloquent speech that brought us to the Emancipation Proclamation that talked about unifying the nation with coloreds and whites. He indicated and realized that we are better together than separated, the hand works better than fingers separately.

So one comment was made nine other states.

Well, let me share with you, you happen to be the forum,

we're not in front of the Supreme Court where maybe these

arguments would be more appropriate, or in front of the

Court of Appeals. But the nine other states did not have

the core of activism that consciously registered that

symbol would come. And then one mentioned that there were

lawsuits and they're right. The lawsuits were benign. To

make the point, there was not a vigorous defense, and it

based its premise on the First Amendment.

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But I know this state, I know the ability to advocate with a legal argument because you should be interested in that, you will obviously, if the decision comes that would suggest something counter to the utilization of this flag. Let me just share with you, the First Amendment is not without its restrictions, as the representative said. You cannot cry fire, Supreme Court decision, in a crowded theater.

You cannot consider the issuance of a flag in a state as diverse as this state is, with pockets of history maybe even more intense than other states simply because of the Emancipation Proclamation and the not recognizing slavery two years hence. Do any of you know that slave-holders pushed slaves into Texas as a bank account because they didn't believe the Union would hold up? And that meant that bondage that started in 1619 continued for two extra years. That means that people died as slaves because they didn't get the word until 1865. That means that slaves were either hung, shot in the back, those trying to escape, died of old age or sickness, mothers gave birth, died in birth because of the lack of medical care as a slave. That history needs to be as much recognized by our friends in the Confederacy.

Now, how do I answer their concern for history?

I answer it with a personal privilege: I have slave history. I might come to you and say would you put a hanging slave on the license plate because I want to honor, I don't want those people to go away with a fleeting you need to get over it. But maybe you will say to me that thee are African-American history museums, there are church lobbies such as the Dexter Street Baptist Church at Montgomery, Alabama that holds some of the artifacts of the civil rights movement. You can privately honor. You can even get a specialty plate, you can use some of the entrepreneurs around the State of Texas to be able to print those plates.

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Our argument is that a state action sanctioned license plate gives me as much legal right to oppose. That is how the 1964 civil rights law was passed. It was on the basis of interstate commerce that you could do privately what you cannot do publicly. And so my friends talk about the potential of a legal argument based on the compliance with the administrative process of I sent my money, I filled out this form.

But my argument is the State of Texas is sanctioning this. If those arguments were made, if we took this to the Supreme Court, they have not spoken to this issue yet, and the state action puts you in the crosshair and the violation of civil rights laws, in

particular, the equal protection of the law which does not deny me or a Latino or an Anglo the equal protection of the law, or an Asian, you cannot deprive me of my life or liberty or property. And in essence, what the volatility of a flag and just the announcement of it in this state would by its very nature suggest some form of depriving of our constitutional right.

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I just want to quote you General Lee, a southern general, and I acknowledge that blood was shed on both sides. As little kids we studied it and we were taught that Abraham Lincoln freed the slaves, and as we matured we understood the prominence of the Union in this discussion. But I will tell you, as having lived in this skin all of my life, and unlike my dear moderator I'm going to continue to protest that I'm 21 and therefore will not cite any age before you, but would hope that you would understand that maturity allows me to see how we have transitioned, from the issue of women voting, to the issue of women empowered, to the issue of our Latino brothers and sisters joining us, both immigrant and nonimmigrant, those who have lived here for eons, Anglos, Asians, all fighting under this one flag because we've come to understand the value of unity.

Here's what General Lee said, as I thank you for your indulgence and come to a close. When confronted

with the notion that the outcome of the Civil War could never be accepted as final, General Lee wisely counseled:

Abandon your animosities and make your sons -- and I would say daughters -- Americans.

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I finish on this note of animosity. In Germany, even though they don't have the privilege of the First Amendment, they understood the swastika, their penal laws have outlawed the visible showing of that, even though it had some early good history, but they realize what Naziism did to them, they realize what Hitler did, they realize the holocaust. Let Texas, as Governor Perry has said -- let me personally thank Governor Rick Perry for stepping beyond his box and indicating that it is appropriate that we not rehash old wounds.

For those who want to honor the Confederate soldiers, let me say to you please do it, as we have honored Buffalo Soldiers and Tuskegee Airmen and the Marines that had never been honored that were black that were organized in Florida. But let it be very clear to my dear friends that when I have seen soldiers in Iraq and Afghanistan, and I say that when I have personally seen them as I have gone as you've allowed me as a member of Congress, when I've walked those dusty roads where their tents have been set up, when I see these young boys and girls and when I have visited them in places like Walter

Reed and seen dismembered or those who have lost hands and arms, when I've seen them burned in hospitals in Germany, every one of them in the faintness of their voice, speaking to the love of country, and to many for the Lone Star flag that we've seen flown, if you find some Texans, they've got it up, or you've seen the American flag, but they have not shown the Confederate flags.

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So I close by saying is this a symbol of hate?

Hate crimes law protects you as well, it generates hate

speak. But here is a definition: First founded by

veterans of the Confederate Army in 1865, the KKK has gone

through several iterations, first as an insurgent movement

in the South during reconstruction, then as a racist,

anti-semitic, anti-immigrant fraternal organization.

I apologize to my friends, the Sons of the Confederacy, but history must get us looking at the history in totality, we can't isolate it to the lone soldier on the battlefield that may have carried it in good intentions. Let that person be honored in a museum, a church, a home because we cannot stop private action.

But this, which I hope to submit to you and to the record, Mr. Chairman, is an example of what this flag is today, and for those who have experienced the idea of today's history, it is not the battle flag, it is a flag that has caused the pain and fear and burning that generated the kind of sadness when people have chosen to call others different. As our very young spokesperson said, who is she, is she an American.

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So I hope in the pressing of the legal argument to say to you that Texas is better than those other states and I would say that to my colleagues in the United States Congress, and that history grows, it is not just one battle soldier in the Civil War, it is what this flag became a symbol of. In the post-reconstruction era, there were more hanging fruit, as we are known as African-Americans, that hung throughout the states under the auspices of an organization like this that chose to use this flag as their symbol and battle cry.

I feel very emotional right now, partly because I'm delighted to see you and welcome the fact that we are all Americans, but if this single vote, which some may consider a simple exercise in administrative procedure, can tell the world that America has moved way beyond and that the second largest state in the nation, while its boys and girls are overseas and while we are on the eve of the 2011 Veterans Day, that we stood for the uniting of America, not the dividing of America, and that a southern governor by the name of Rick Perry, whose history was grounded in the Confederacy, stood alongside of the ministers and those in this room and asked us to

recognize, to not tear into old wounds, I promise you that you are on solid, legal ground for this is a cause that is based in the Constitution of the United States, the Bill of Rights and equal protection.

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God bless all of you for your consideration,

God bless you for being Americans, and I don't know, there

may be someone who served in the United States military

sitting here today, thank you for your willingness to

serve this nation.

Mr. Chairman, you have been gracious. I yield back my time.

MR. VANDERGRIFF: I'll read the names of individuals who are here against the plate: Reverend Gerald Shanks; as I noted before, Pastor Max Miller, Reverend Steven Morgan, Pastor James Nance, and Reverend Fred Bankley. So thank you for attending and registering your interest in this plate.

I also want to note we did lead off our comments by reading Representatives Ruth Jones McClendon's comments into the record. Thank you for being here, Representative.

I did indicate to Mr. Matthews earlier that he had an interest point that you're speaking on the plate, so we'll recognize you. He's not speaking for or against, he just had a point he wanted to make.

CAPT. MATTHEWS: I rise as a point of clarification. Commissioner Patterson came up and tried to make a comparison of the Buffalo Soldiers and the Confederate Soldiers.

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MR. VANDERGRIFF: Do you want to make that comparison?

is no comparison. The Buffalo Soldiers were the peacekeepers in the American West, they built camps, forts, railroads, delivered the mail, strung telegraph wires, charted the land, chased down outlaws, Comancheros. Without the Buffalo Soldiers, the westward movement would have been delayed 50 years. Our mission at the Buffalo Soldiers National Museum is to promote, perpetuate and honor the brave men and women who fought, bled and died in defense of America.

And I'm going to give you a visual. Most of the people made all the comments that I was going to make, I won't be redundant. The Buffalo Soldiers fought to defend this flag, the Confederacy fought to destroy this flag. I say to you when you see these two flags, what are you thinking about when you make your decision. That's all I have to say, the Buffalo Soldiers or the Confederacy flag.

Thank you.

MR. VANDERGRIFF: Thank you.

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That concludes the public comments, and thank you very much for your time on that. I do want to note for the benefit of the audience, and certainly my fellow board members are aware of this, that typically when plates come before us, when we were created, the decision was made by the legislature to have this board hear plates versus being decided, in essence in secret, for or against by the staff of the Texas Department of Transportation. And in fact, there is a history with this plate at that department that it might have actually been approved by the department versus coming before this board.

One of the great things about this board, that's been noted by several of the speakers, is that it is available to the public and to the industries so that all matters are aired in public. And I think that's one of the great things that we've seen today is that this has not been something decided in secret, it's been decided in open with comments both for and against this -- or will be decided.

I want to note that typically when we get plates before us, because the decision also was made by the legislature that we wanted to encourage private plates so that we could generate additional revenue for the state. We have had a proliferation of those plates, if

you will, over the last two years to accomplish that very task. Most of the time we base our decisions on rules that primarily deal with reflectivity and readability.

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We do, however, always look at Transportation Code Section 504.801(c) which is that the department may refuse plates if the design is offensive to any member of the public, the nominating state agency does not consent to the receipt of funds derived from the issuance of the license plate, the uses identified from those funds might violate a statute or constitutional provision, or for any other reason established by rule which, again, most of our rules today deal with reflectivity, readability and proliferation of the plate. So I wanted to note that for the record that these are the things the board will consider, I'm sure, as it makes a decision.

With that, I'm happy to open this up to my board members.

MR. RODRIGUEZ: I move we not approve items 5.A.1 and 2, Mr. Chairman.

MR. VANDERGRIFF: Do we have a second for that motion?

MR. PALACIOS: Second.

MR. VANDERGRIFF: We have a motion from Board Member Rodriguez, a second from Board Member Palacios. Do we have any discussion?

| 1 | MR. INGRAM: Is the motion to deny number 1 and |
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| 2 | 2? |
| 3 | MR. VANDERGRIFF: No. The motion is to deny |
| 4 | just the |
| 5 | MR. INGRAM: His motion was 1 and 2. |
| 6 | MR. VANDERGRIFF: 1 and 2? |
| 7 | MR. RODRIGUEZ: 1 and 2, yes, sir. |
| 8 | MR. VANDERGRIFF: Your motion was to deny 1 and |
| 9 | 2? |
| 10 | MR. RODRIGUEZ: Yes, sir. We're considering |
| 11 | both at this time. Right? Are we not considering both? |
| 12 | MR. VANDERGRIFF: The way we brought it up, it |
| 13 | was just the Sons of Confederate Veterans. |
| 14 | MR. RODRIGUEZ: All right. Let me modify my |
| 15 | motion then. I move that we not approve item 5.A.1. |
| 16 | MR. VANDERGRIFF: Do we have a second for that? |
| 17 | MR. PALACIOS: Second. |
| 18 | MR. VANDERGRIFF: We have a motion and a |
| 19 | second. Do we have any discussion by the board? |
| 20 | (No response.) |
| 21 | MR. VANDERGRIFF: Seeing none, I will call for |
| 22 | your vote. A yes vote is a motion to deny. All those in |
| 23 | favor of denying the plate, please raise your right hand. |
| 24 | (A show of hands.) |
| 25 | MR. VANDERGRIFF: All those opposed? |

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(No response.) 1 MR. VANDERGRIFF: The motion carries 2 unanimously, the plate is denied. 3 (Applause and cheering from audience.) 4 MR. VANDERGRIFF: We do have other business to 5 6 attend to. Given the fact that the room is a little 7 crowded, we're going to stand in recess for 15 minutes. MR. VANDERGRIFF: The Board of the Texas 8 Department of Motor Vehicles, we are back in session. 9 10 We're going to take up where we left off which, again, was out of the order of the posted agenda, but that 11 is on 5.A.2 which is the Buffalo Soldiers plate. 12 I'm not sure if Commissioner Patterson is still here in the room 13 to speak for this plate. I think he had given his 14 15 thoughts previously on it, so I will acknowledge that he 16 is the head of the sponsoring state agency. We do have three speakers here in favor of this 17 plate that I do want to recognize. The first is founder 18 19 of the Buffalo Soldiers National Museum, Paul Matthews. 20 CAPT. MATTHEWS: Good morning. This is a marvelous day that the Lord sent, show a little 21 22 enthusiasm. Good morning.

CAPT. MATTHEWS: That's more like it. My name is Captain Matthews. I'm the founder and the curator of

AUDIENCE: Good morning.

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the Buffalo Soldiers National Museum. The museum opened January 5, 2001. We focus on, we feature the Buffalo Soldiers, but in actuality, we give a perspective on the African-American military experience from 1770 to 2000, or from the Revolutionary War to the Gulf War, or if you talk about personalities, from Crispus Attucks to Colin Powell.

The Buffalo Soldiers was started in 1866, a year and a half after the conclusion of the Civil War. The army reorganized and established the first peacetime army for the U.S., and as a part of the reorganization, they created six all-black units, the 9th and 10th Cavalry, the 38th, 39th, 40th and 41st Infantry, and then three years later in 1869, the four Infantry became the 24th and 25th, and those four units, the 9th and 10th Cavalry, the 24th and 25th Infantry went on to become what we commonly call now the Buffalo Soldiers. And those units still exist today. If you go to Fort Hood, Texas in the 1st Cavalry Division, the 9th and 10th Cavalry exist today.

So I ask of you today to approve the plate.

And I'll close with a poem, that I use when I go out to schools to give my presentations, entitled "God's Minute" written by Benjamin Mays. Benjamin Mays is a former president at Morehouse College in Atlanta. The poem simply says: "I have only just a minute, only sixty

seconds in it, forced upon me, didn't seek it, didn't 1 2 choose it, but it's up to me to use it. I'm a sucker if I 3 lose it, give account if I abuse it, just a tiny little minute, but eternity is in it." 4 And the next minute when you make this 5 6 recommendation, I hope it's for approval of the Buffalo Soldiers National Museum license plate. God bless you. 7 MR. VANDERGRIFF: Cleveland Burrell. 8 MR. WALKER: Victor, can I ask a question? 9 MR. VANDERGRIFF: Please. 10 MR. WALKER: Where is the Buffalo Solders 11 Museum located? 12 13 CAPT. MATTHEWS: (Speaking from audience.) 1834 Southmore, Houston, Texas, in the museum district 14 15 between downtown Houston and the Texas Medical Center. 16 MR. WALKER: Thank you. 17 MR. VANDERGRIFF: Mr. Burrell apparently has left. I will note for the record that he was for this 18 19 item on the agenda. And the last person who has indicated wishing 20 to speak is David Edmondson, who is a senior policy 21 analyst for Senator Rodney Ellis. 22 MR. EDMONDSON: I know the senator sent this 2.3 24 letter yesterday and so it should be in your packets, but

having worked for elected officials for a while, there are

a lot of things placed in packets that they're urged to read that don't always get read, so that's why I'm just going to read the letter briefly.

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"Dear Chairman Vandergriff and Members, I write to ask you to vote in favor of an item on the DMV Board agenda, the Buffalo Soldiers specialty license plates.

The Buffalo Soldiers have long served our country's military forces honorably and their service should be officially recognized through the approval of the proposed plates.

"The Buffalo Soldiers National Museum, to which revenue from the specialty plates would be distributed, is a wonderful institution in my Senate district. I personally toured the facility with Land Commissioner Jerry Patterson, and it fulfills its mission well, preserving the legacy and honor of the African-American soldier.

"In 1866 the U.S. Army reorganized and established the first peacetime army for the United States. The reorganization included the establishment of six all-black units, the 9th and 10th Cavalry regiments, and the 38th, 39th, 40th and 41st Infantry regiments. In 1869 the four infantry regiments became the 24th and 25th Infantry. These four regiments went on to become what we now commonly call the Buffalo Soldiers.

"Buffalo Solider units have participated in 1 America's military engagements from 1866 to present, 2 3 including the Spanish-American War, World War I, World War II, Vietnam, and the Persian Gulf War. Currently the 9th 4 and 10th Cavalry is part of the 1st Cavalry Division 5 6 stationed at Fort Hood, this they remain part of Texas's yesterday, today and tomorrow. 7 8 "Again, I ask that you vote in favor of the Buffalo Soldiers specialty license plates." 9 10 Thank you. MR. VANDERGRIFF: I don't see any other cards 11 for or against it. With that, I would be pleased to 12 13 submit this one to the members of the board. MR. RUSH: I make a motion that we approve it. 14 15 MR. INGRAM: I'll second that one. 16 MR. VANDERGRIFF: We have a motion by Board 17 Member Rush to approve it, and a second by Board Member Ingram. Do we have any discussion? 18 19 (No response.) MR. VANDERGRIFF: Please raise your right hand 20 in support of the motion. 21 22 (A show of hands.) MR. VANDERGRIFF: It's six. And then please 2.3 24 raise your right hand opposing the motion. (A show of hands.) 25

ON THE RECORD REPORTING (512) 450-0342

MR. VANDERGRIFF: Three. So the motion carries 1 2 six to three, the plate is approved. MR. WALKER: That can't be right. 3 MR. VANDERGRIFF: I'm sorry. It's five to 4 I apologize, I couldn't add. Five to three. 5 three. 6 MR. BRAY: For purposes of the record, would you mind identifying one side and the other? 7 8 MR. VANDERGRIFF: Sure. Board Members Rush, Ingram, Butler, Ryan and Vandergriff voted in favor, Board 9 10 Members Palacios, Rodriguez and Walker voted against, with Board Member Johnson absent. 11 12 Thank you for asking that. 13 We're going to go back now to the top of our agenda, which is the consent agenda, and Mr. Harbeson on 14 item number 2. 15 16 MR. HARBESON: May I proceed? 17 MR. VANDERGRIFF: Please. MR. HARBESON: Good morning. My name is Bill 18 Harbeson. I'm the director of the Enforcement Division, 19 and I'm presenting the consent agenda to you today for 20 21 your approval. 22 On the agenda today there are 40 enforcement agreed orders, 30 enforcement notice of violation citation 2.3 24 orders, two motions to dismiss where we're asking for an order of dismissal, two Lemon Law cases where we're 25

seeking orders of dismissal, and one franchise case where 1 we're seeking an order of dismissal. 2 3 You've been previously provided with these orders and we're, therefore, asking you to approve them. 4 MR. RODRIGUEZ: So moved, Mr. Chairman. 5 6 MR. BUTLER: Second. 7 MR. VANDERGRIFF: Motion from Board Member 8 Rodriguez, second from Board Member Butler. Please raise your right hand in support of the motion. 9 10 (A show of hands.) MR. VANDERGRIFF: Those opposed? 11 12 (No response.) 13 MR. VANDERGRIFF: The motion carries unanimously, again, Board Member Johnson absent. 14 15 Thank you, Mr. Harbeson. I believe you are 16 still up on 3.A. On today's agenda there 17 MR. HARBESON: Yes. are 24 orders that we're asking you to approve. These are 18 19 cases where there's been a default by the respondent and the staff has presented you with orders in these cases. 20 MR. RODRIGUEZ: So moved, Mr. Chairman. 21 MR. RUSH: Second. 22 MR. VANDERGRIFF: We have a motion from Board 2.3 24 Member Rodriguez, a second from Board Member Rush. Please 25 raise your right hand in support of the motion.

ON THE RECORD REPORTING (512) 450-0342

(A show of hands.)

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MR. VANDERGRIFF: The motion carries unanimously. Thank you, Mr. Harbeson.

MR. HARBESON: Thank you.

MR. VANDERGRIFF: The next item is 3.B, but we're going to pass that one for the moment and take care of the individual resolutions, and after these individual resolutions and the advisory committee updates, we do need to have a short executive session, so we're going to end up going into executive session. We'll make a quick determination about how long and we'll let you know before we do that, but we'll go to item 4.A at this point.

MR. BRAY: Mr. Chairman and members, this is a rule proposal, a request to publish. It involves your advisory committees and it's what I would determine as cleanup measures. It's based a lot on House Bill 2017 which cleaned up the advisory committee situation that the board had labored under the last couple of years in terms of having specific advisory committees required for specific divisions. House Bill 2017 eliminated the need for specific divisions and it also eliminated the need for specific advisory committees, leaving the board with much more flexibility to create advisory committees as needed, when needed, where needed.

And so this is a request to publish these

proposed rules, amendments and repeals for public comment 1 and your ultimate consideration in the future. 2 3 MR. RODRIGUEZ: Are you doing 4.A and 4.B, C and D? Are you addressing all four at one time or just 4 4.A? 5 6 MR. BRAY: No, sir. I'm only speaking to Chapter 206, Subchapter E, §206.91 to §206.94, which the 7 8 chapter is Management and the subchapter is Advisory Committees. Ms. Flores is going to speak on the chapter 9 10 on Finance, Mr. Harbeson will speak on the chapter on Advertising, and Mr. Elliston will speak on the chapter on 11 Inspections. 12 13 MR. RODRIGUEZ: Okay. These are all rule proposals and I was wondering if you wanted to take them 14 15 all at one time. But Mr. Chairman, I'll move that we 16 approve publication of the rule proposed under 4.A. 17 MR. VANDERGRIFF: Do we have a second to that motion? 18 19 MR. RUSH: Second. MR. VANDERGRIFF: Second from Board Member 20 All those in favor please raise your right hand. 21 Rush. 22 (A show of hands.) MR. WALKER: No discussion? 2.3 24 MR. VANDERGRIFF: I'm so sorry, Mr. Walker. you have discussion that you'd like to have? 25

ON THE RECORD REPORTING (512) 450-0342

| 1 | MR. WALKER: No. |
|----|--|
| 2 | (General laughter.) |
| 3 | MR. VANDERGRIFF: Please raise your right hand |
| 4 | in support of the motion. |
| 5 | (A show of hands.) |
| 6 | MR. VANDERGRIFF: The motion carries |
| 7 | unanimously of those present. |
| 8 | It is perfectly acceptable, I believe, for me |
| 9 | to take up B, C and D as a single motion, or do you prefer |
| 10 | to have separate motions? |
| 11 | MR. BRAY: No. It's fine to take them up as a |
| 12 | single motion. |
| 13 | MR. VANDERGRIFF: If the board members have |
| 14 | read them sufficiently, otherwise, we have a different |
| 15 | person on each particular one, so I'll bow to the pleasure |
| 16 | of the board. |
| 17 | MR. RODRIGUEZ: These are rule proposals, Mr. |
| 18 | Chairman. I move that we approve publication of rule |
| 19 | proposals under B, C and D as well. |
| 20 | MR. RUSH: Second. |
| 21 | MR. VANDERGRIFF: We have a motion and as |
| 22 | second. Any discussion? |
| 23 | (No response.) |
| 24 | MR. VANDERGRIFF: I will note that certainly |
| 25 | all of us have read these and we are just publishing them |

ON THE RECORD REPORTING (512) 450-0342

so we'll hear from the industry if there's any issues or 1 concerns. We certainly can have our say at that as well, 3 going forward. Seeing no further discussion, please raise your 4 right hand in support of the motion if you so choose. 5 6 (A show of hands.) 7 MR. VANDERGRIFF: The motion carries 8 unanimously, all three rules are published. Again, Board Member Johnson is absent. 9 10 MR. VANDERGRIFF: We'll go ahead and take a couple of things and continue forward. It's 5.B, which is 11 committee updates. 12 13 MR. RODRIGUEZ: The Oversize Committee is Mr. Walker? 14 15 MR. WALKER: Be careful, Victor. 16 MR. RODRIGUEZ: Overweight Committee. MR. VANDERGRIFF: He likes to make sure and 17 make that point at every meeting. 18 19 (General laughter.) MR. WALKER: I guess you're asking for an 20 overview of what's going on. 21 MR. VANDERGRIFF: If there's anything new to 22 report. 23 24 MR. WALKER: We have not gotten much further than where we were last month on the MOU. The MOU that 25

was presented to TxDOT on November 4 is still over in their office, they have not responded to it. There has, however, been some dialogue between our people and the people at TxDOT. They wanted to make a few changes. There is, I believe, three changes that they were wanting to be done.

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Number one is the FTEs, the law specified a number of FTEs, we added one FTE to that because we wanted to add an HR person because state law requires that we have to have an HR person for every 85 people we have, so we were going to request that they move their HR person over to us. They do not want to do that. I personally think that's probably better on our part because they may have given us the worst person in the bucket. So this way we can hire our own HR person that we'll need.

The other thing was we asked for ten trucks for the Enforcement Division. They've told us that we didn't need that many cars, so we have reduced that back down to I thought it was two but the MOU I saw is five. It is five. I thought we were going to go two but it's five.

And there's one other thing. They have requested that the four mappers that do the mapping be left over at TxDOT, they want to keep those people. It's an absolute from within the industry and from everything we know the TxPROS system needs and we will need those

four people in order to set those routes up, so we're 1 going to stand firm ground that those people have to be included in the transition that comes to us. 3 So we're still waiting on that. We've changed 4 also the date from November to December 1 on the closing 5 6 of it. If we do not have an MOU in place by next month, 7 the law still is going to say that the transition takes 8 place on December 31 and we will go forward as proposed. The money is there set aside by the LBR so that we have it 9 10 available, the \$20 million to run the department. Did I miss anything, Aline? 11 12 MR. VANDERGRIFF: Any questions from the board 13 members? (No response.) 14 15 MR. VANDERGRIFF: I will assume that on item 16 5.C that nothing new to report, so we don't need to spend 17 any more time on that. MR. RODRIGUEZ: May I ask one more question? 18 19 MR. VANDERGRIFF: Sure. MR. RODRIGUEZ: Linda, on that one, total 20 number of FTEs that we will bring over estimated based 21 upon whatever we agree on, do you know what the number is? 22 MS. FLORES: One hundred sixteen. 2.3 24 MR. RODRIGUEZ: One hundred sixteen that would 25 add to the 600-and?

MS. FLORES: Forty-seven.

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MR. RODRIGUEZ: Thank you.

MR. VANDERGRIFF: With that, the last item we'll take up before executive session is Senate Bill 529, the Special Advisory Committee. Molly Cost.

I want to acknowledge several members of the audience were participating on that committee as well.

MS. COST: Good morning. For the record, my name is Molly Cost. I'm the director of the Motor Vehicle Division.

I don't have for you today the minutes of the two Senate Bill 529 Advisory Committee meetings that we have had. The last one was held just last week on November 2. We will have those minutes and a timeline of moving forward for you by the next board meeting.

But it was another wonderful meeting, a great discussion. They scared me at first, just like they did at the first meeting, nobody was saying anything, and then all of a sudden the conversation started and it was really great. Staff got a lot of good feedback from everyone in the room as to the intent behind the bill and some of the practical effects of it, and I feel like that's ultimately going to end up in a really great rulemaking package to eventually come before this board.

Staff intends to continue to work with the

stakeholder groups to get as much of the rule as a consensus as we possibly can. I think there are some items that they may be a little difficult on, but I think there are definitely pieces even of those items that we'll be able to reach consensus on with the stakeholder groups. Everybody participated a lot and it was really wonderful to hear all the discussion.

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The one other thing that I have to talk about that, my understanding is that Mr. Ingram is willing to give up his seat, I suppose, to allow Mr. Palacios to be invited into the official Senate Bill 529 Advisory

Committee, and I have a resolution here, Mr. Chairman, if you want to consider that.

And thank you very much, Mr. Ingram, for your participation. It was very helpful. It was very helpful from all of the board members and all the members in the audience that were there.

MR. RODRIGUEZ: Chairman, on that resolution to allow Mr. Palacios to serve, is it something we can act on right now?

MR. VANDERGRIFF: Yes.

MR. RODRIGUEZ: So moved, Mr. Chairman.

MR. VANDERGRIFF: We have a motion. Do we have a second?

MR. RUSH: Second.

MR. VANDERGRIFF: Second from Board Member 1 2 Rush. The discussion rising with that is Blake was 3 the placeholder there until we obviously had a 4 representative from the franchise dealer group to 5 6 participate, so I appreciate his service and I appreciate 7 you moving forward with it. MR. INGRAM: I learned a lot of stuff about new 8 car dealerships. 9 10 MR. VANDERGRIFF: We have a motion and a second. Any further discussion? 11 12 (No response.) 13 MR. VANDERGRIFF: Please raise your right hand in support. 14 15 (A show of hands.) MR. VANDERGRIFF: The motion carries 16 17 unanimously. MR. RODRIGUEZ: Mr. Chairman, I understand you 18 19 want to go into executive session. I would ask, if you will, at this point in time to call up your report under E 20 on the vice chair election. Could we do this before we go 21 22 to executive session? MR. VANDERGRIFF: We can certainly discuss it, 2.3 24 yes, and take appropriate action. I put this on the agenda because last year we had a discussion and we as a 25

board decided that we would vote on the vice chair position on an annualized basis in May of each year, and we did not have a meeting, we had a specially called meeting by teleconference but we did not have a meeting in May, and then sadly, in June we lost Board Member Ramsay Gillman, and last month was the first meeting which we had a full board again.

So my intent was it's the pleasure of this board if we wanted to still hold an election in this calendar year for that, great, we could do that. If we chose to just pass this calendar year and hold an election in May of next year, that's at the pleasure of this board as well. So I brought it up to report to you. I noted December here because my thought process was obviously I was making you aware of your options so that you could make me aware and December would be the last month in this calendar year.

MR. RODRIGUEZ: It was last year at this time we voted on making a change and I'm glad that we have it up today. I'd like to make a motion that we elect as vice chair Laura Ryan.

MR. VANDERGRIFF: Can I ask a question first?

It's as a briefing item under the Chair Reports. I know we do have at the beginning of the agenda that we reserve the right to take action on any item on this agenda. I'm

speaking to our legal counsel. I want to be sure that, 1 given that we're about to maybe get a motion, that we are 2 3 within the bounds to take this up or not. MR. BRAY: I think there's insufficient notice 4 for you to take this up as an election item. I might be 5 6 willing to be swayed from that if you hadn't said the 7 December meeting, but that telegraphs to the public that 8 you're not going to do it this month. So I think it's insufficient notice for you to take it up this month. 9 10 MR. RODRIGUEZ: And that's because of that posting? 11 MR. BRAY: Yes, sir. 12 13 MR. RODRIGUEZ: Do you recall about two meetings ago we had a briefing on specialty plates? 14 15 going to take you back a couple of meetings. 16 MR. BRAY: To be honest with you, I think we 17 have briefings almost every meeting about specialty plates. 18 19 MR. RODRIGUEZ: Do you remember the time that we talked about public input, the internet feedback we 20 were getting? 21 22 MR. BRAY: Yes. MR. RODRIGUEZ: It wasn't posted, nothing like 2.3

that happened with that discussion item, it was a briefing

item, and we were able to make a motion at that time that

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we no longer consider the internet briefing material as part of the submittals up here.

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And that's just one example. We've acted time and again on briefing items and we turned them into action items based our ability to do so, so I'm wondering what the difference is between that and now.

MR. BRAY: Specifically, I wasn't asked every single time.

MR. RODRIGUEZ: But even if you weren't asked, Brett, wouldn't you have, as part of your job, kind of asserted yourself into the process and told us you can't do that?

MR. BRAY: Well, I think we'd have to go back and look at every single agenda item and discuss them individually because I don't retain all of them in my head, number one. But number two, and more importantly to this item today, as I said, I'd probably be able to defend you better had it just said vice chair election based on the boilerplate at the front of the agenda, but the fact that we telegraphed to the world that you're intending to do it at the December meeting I think makes it problematic.

MR. RODRIGUEZ: So Mr. Chairman, I understand that. I'll ask next from Mr. Bray about what is the penalty.

MR. BRAY: And that is an interesting point.

Well, it's under the Open Meetings Act so you potentially run, I think, a criminal offense. The question is usually in a case like this you have to have somebody harmed that's going to bring up the question of I wasn't given notice and you acted without my having a fair opportunity to be there and talk about it. In this case, the only person I guess that could say that is another board member who is not here. Other than that, the penalty is you may have -- I don't think you have -- I'm going to retract what I said about a criminal offense, I don't think there is a criminal problem here, so it would be a question of voidability and that would depend on somebody complaining, and I think you're pointing out that there's hardly anybody to complain other than one of your own.

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MR. RODRIGUEZ: Well, I want to point out also for you, Brett, in consideration of this discussion item that the fact is that the board took action about a year ago specifically to vote on this back in May. We didn't, so which of the two is a greater error?

MR. BRAY: I'm sorry. You didn't take action in May?

MR. RODRIGUEZ: No, sir. About a year ago we took action to specifically vote on this matter in May of this year. That's a board decision which was not acted

on.

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MR. BRAY: I would say today is the greater error. The fact that you refrained from taking action in May, particularly given the circumstances that the chairman has enunciated a couple of times today about the loss of one of your own and some other things that occurred, I would say that the board was pretty much excused from the May issue.

MR. RODRIGUEZ: I'm sorry. How is the board excused from the May issue?

MR. BRAY: Well, in answer to your question, I think this would be the greater error.

MR. RODRIGUEZ: So now tell me how is the board excused from the May issue?

MR. BRAY: Well, first of all, we did not have a meeting in May, nor did we have a meeting in June, the first meeting was in July, and at that point Mr. Gillman had died and it is the chair's determination as to what is on the agenda, and I think the chair determined not to place it on the agenda in July, and I frankly cannot remember about August or September.

MR. RODRIGUEZ: Mr. Chairman, I made a motion.

MR. PALACIOS: I'd like to ask it appears to be the only reason --

MR. WALKER: His motion needs a second first, I

ON THE RECORD REPORTING (512) 450-0342

think. 1 MR. PALACIOS: Oh, okay. Well, then I'll 2 second. 3 MR. WALKER: You're going to second his motion? 4 MR. PALACIOS: Yes. 5 6 MR. WALKER: Now you can discuss it. MR. VANDERGRIFF: Thank you very much, Mr. 7 Walker. 8 9 MR. WALKER: I'm sorry. 10 MR. VANDERGRIFF: That's all right. Go ahead. We are in discussion. 11 12 MR. PALACIOS: It appears to be the only reason 13 that we wouldn't move forward with this is that there's a party who would contest this, and being a new board member 14 15 out of the eight of us here, I don't see any reason why we wouldn't move forward. 16 17 MR. VANDERGRIFF: Well, you are talking about the vice chair position and the sitting vice chair is not 18 19 here, so that is a point. 20 Mr. Walker, you look like you're poised. MR. WALKER: Yes. There's not a set rule under 21 22 our rules or under law that says that there's a term of a vice chairman, I don't believe, that says it's a one-year 2.3 24 term, it's a two-year term or it's a six-month term. Is 25 that not correct? Is there a term?

MR. BRAY: I don't believe there's any term, as 1 it stands now. 2 MR. RODRIGUEZ: The law is that the chair and 3 the vice chair serve at the pleasure of the board, and my 4 point with that is the pleasure of the board --5 6 MR. WALKER: No, that's not correct. MR. RODRIGUEZ: Yes, it is. 7 MR. WALKER: The chairman serves at the 8 9 pleasure of the governor. 10 MR. RODRIGUEZ: No, sir. The statute says that the chair is appointed by the governor, but if you read 11 the statute -- I know it conflicts, and I'm not taking 12 13 issue with the chairman, I'm just telling you -- you asked about what the authority is, and the authority citation 14 15 I'm telling you says the chair and the vice chair serve at 16 the pleasure of the board. 17 MR. WALKER: But the chairman is appointed by the governor. 18 19 MR. RODRIGUEZ: Yes. So we could get into a cycle where we say we vote him out and the governor 20 appoints him back in, and that's the remedy for that. 21 22 that's not the point of discussion, I'm just trying to answer your question on that. 2.3 24 And what I'm saying to with regard to that

question is that because that person serves at the

pleasure of the board, that is the vice chair, the pleasure of the board was clearly made a year ago, and we have failed to act on official action by this board to vote on this earlier than today.

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MR. WALKER: So you're saying that the board has never voted on Ms. Johnson being the vice chair?

MR. VANDERGRIFF: We voted on Ms. Johnson being vice chair a couple of meetings into the board, and we never set a limit on that. We had a later discussion, I believe it was the early part of this year, that indicated that we would set May as a reasonable time frame on an annual basis to vote.

MR. WALKER: There's my question right there, because I'm not aware of this annual basis, so you're shaking your head.

MR. RODRIGUEZ: No. There's no term affixed. What we said was, when we acted on this last year at this time, I'm in part agreeing with you, I think it was you that said, Can we move this to May? And I said, Okay, I'll agree with that. So we agreed that the term would end in May and we'd have an election in May. That was official action on our part.

MR. WALKER: Well, if we're going to have an election of a vice chairman, we wouldn't we want to take motions or nominations from the board?

MR. RODRIGUEZ: That's what I'm doing today.

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MR. WALKER: I guess where I'm a little bit confused is you made a motion just off the floor for Laura to be a nominee for the vice chair, and then we had a second on that motion right here, but I didn't know that we were holding an election today. Are we going to take further nominations and are we going to vote on that today, and what's the term limit of this term going to be, is it going to be for one year, is it going to be until we decide that we want somebody different, what's the ramification?

MR. VANDERGRIFF: If I can interject. We do have a motion and a second on the floor and so we have to deal with that which indicates we would elect one person as the vice chair. However, you could certainly, if that motion was defeated, have nominations.

MR. RODRIGUEZ: Mr. Chairman, may I modify the motion in order to appease Legal and also perhaps vacate and live within the confines of the particular agenda that according to Legal we must abide with.

My motion right now is that we end Ms.

Johnson's term as vice chair and that we open this up for

December. So what I'm saying is if you don't want to vote

on a vice chair today so that we don't conflict with this,

I deal with that. So as a separate motion what I'll do

then let's live without a vice chair for a month and my 1 motion is therefore modified so we end her term as vice 3 chair upon our vote today and in the next month, like you've indicated here you want to vote next month on this, 4 you can take nominations then. 5 6 MR. WALKER: I'll second that with one stipulation, or I make a modification that at that time 7 8 that we put some kind of term limitation. MR. RODRIGUEZ: You can do that. 9 10 MR. WALKER: I'm sorry? MR. RODRIGUEZ: You can do that if you want to. 11 MR. WALKER: And I would like to put that the 12 13 vice chairman's position would be done on an annual basis, evaluated annually. 14 15 MR. RODRIGUEZ: You can do that next time 16 around. If you recall, last year when I was doing that I 17 was trying to get us to vote on vice chairmanships at January of every year, and the only reason it moved to May 18 19 was on account of your request. I don't know if you remember that discussion. 20 MR. WALKER: No, I don't remember. 21 MR. RODRIGUEZ: Somebody bring the record --22 no, I'm just kidding. The chairman of the Overweight 23

ON THE RECORD REPORTING (512) 450-0342

Committee -- I'm just kidding, Johnny.

(General laughter.)

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MR. RODRIGUEZ: But that's how we got to May. 1 2 So yes, when we make that in December, you can set a term 3 at that point in time if you want to. MR. BRAY: Just so you know, that's my 4 recollection too of the exchange. 5 6 MR. VANDERGRIFF: And I believe that exchange probably was in January or February earlier this year. 7 8 MR. BRAY: Actually, I thought it was in November or December. It was in the winter time frame. 9 MR. RODRIGUEZ: It was in November. Because we 10 were trying to make it effective in January and that was 11 the basis for it, and then through discussion we ended up 12 13 agreeing to having it in May instead. But notwithstanding and to keep us from any concern for conflict, given 14 15 Legal's stated concerns today, then I would modify my 16 motion, he seconded, that simply what we do today is end 17 her term as vice chair effective upon our vote and that we proceed to vote on a vice chair come December. 18 19 So what I'm asking you by that motion, Mr. Chairman, is that --20 MR. VANDERGRIFF: A one-year term as well? 21 MR. RODRIGUEZ: If you want to add it all at 22 this point in time, effective January and for a one-year 2.3 24 term, I would agree to the modification and you can list

it as an action item for next month.

MR. VANDERGRIFF: I'm asking you because that 1 2 was your stipulation, Mr. Walker, that you wanted it to be 3 for like a one-year term. MR. RUSH: Let me do this. I think having an 4 election in December or January is off for me. 5 I just 6 can't be here in January. I have reasons I can't be here 7 in January, every January. 8 MR. WALKER: I'll nominate you, Marvin, don't 9 worry about that. 10 MR. RUSH: I don't want the nomination, that's the last thing I want. 11 (General laughter.) 12 13 MR. RODRIGUEZ: And then so let me backtrack, I quess let's clean this up. My only motion right now --14 15 and we can deal with the term when it gets done, in 16 December when the election happens -- my only motion right 17 now is that, and Johnny, I think, seconded this motion, is that we end Ms. Johnson's term as vice chair upon our vote 18 19 today and that we vote on a vice chair in December, period. 20 I've got a question. 21 MR. BUTLER: 22 MR. RODRIGUEZ: Yes, sir. MR. BUTLER: Why is it necessary to end her 2.3 24 Why can't her term end when the new one is elected?

ON THE RECORD REPORTING (512) 450-0342

MR. RODRIGUEZ: That's just my choice of

motions. 1 MR. WALKER: I don't agree with the way you're 2 wording that, and I don't want to do that. If you'll make 3 a motion that we put it on the December agenda that we 4 have an election for vice chair that serves on an annual 5 6 basis for a term from January 1 through December 31 the 7 following year, I will second that motion. 8 MR. RODRIGUEZ: That's not my motion. MR. RUSH: When would you have the election? 9 10 MR. WALKER: In December. MR. INGRAM: The motion would be to have the 11 12 election on the agenda for December. 13 MR. VANDERGRIFF: For a one-year term, to be elected for a one-year term. 14 15 MR. RODRIGUEZ: He wants to cancel her term 16 right now is what he's trying to do. MR. VANDERGRIFF: Well, the motion is --17 MR. RUSH: I call for a vote. 18 MR. VANDERGRIFF: Well, we don't have a second 19 to that motion yet. 20 MR. RUSH: I thought he seconded it. 21 MR. WALKER: I'm withdrawing because it's 22 modified. Mine is different. 2.3 MR. VANDERGRIFF: I understand. We have a 24 motion. Is there a second of the motion? 25

ON THE RECORD REPORTING (512) 450-0342

(No response.)

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MR. VANDERGRIFF: There's no second to the motion, so would you like to restate the motion?

MR. RODRIGUEZ: Let me bring out my dictionary. You said you want to do what now, Johnny?

MR. WALKER: Do you want me to make a motion?

MR. RODRIGUEZ: I'm listening. I just want to know if I'm going to second it for you, but if I'm hearing you right, the problem I have is this, I want it certain that come the next election cycle we will vote on a vice chair. We have carried this far too long. We talked about this a year ago, a year ago we went through this process, and I don't want to go through another year with this.

The law is clear, the vice chair serves at the pleasure of the board and this board announced its decision a year ago, and we haven't done anything about it. In my view, that is more troubling from acting upon an official decision that what we proposed to do today which was to end the term or actually vote today, but notwithstanding that, I'm withdrawing from that. All I'm saying is that I just want it certain that come December, or however you want to d this, that this term of Ms. Johnson ends, and however you word that, that's fine with me if it's certain that that's what you want.

MR. BUTLER: It ends if she's not reelected. 1 MR. RUSH: Let me make a motion. I'll make a 2 motion that in December we will hold an election for a new 3 vice chair and they will take office in January, and that 4 will happen every December for election again. 5 6 MR. WALKER: And I will second that motion. 7 MR. VANDERGRIFF: We have a motion and a 8 second. Any further discussion on it? The only thing we'll offer is that I humbly apologize for continuing to 9 10 try to hopefully get a full board at anything we do, and that has been a challenge this year because of some 11 circumstances totally beyond our control, but I do agree 12 13 with Chief Rodriquez that this is an issue that has been out there for a year and he raised it then and we agreed 14 15 to have an election and we just haven't, so we will have that election in December. 16 It's not really part of the motion here but I 17 am going to ask you here in a second how many of you are 18 19 going to be here in December? You will be here? Obviously, you may not. 20 I may not be here. 21 MR. RODRIGUEZ: MR. RUSH: I can't be here for the 15th is the 22 only thing. 2.3 24 MR. VANDERGRIFF: I understand.

MR. WALKER: We don't even have date yet for

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| 1 | the December meeting, though, is my understanding, or is |
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| 2 | that the workshop? |
| 3 | MR. VANDERGRIFF: Yes. We've struggled to get |
| 4 | a workshop date which we'll talk about. |
| 5 | MR. RODRIGUEZ: So let me ask this question |
| 6 | before we vote on this, is the workshop attendance 100 |
| 7 | percent scheduled? |
| 8 | MR. WALKER: We don't even have a date. |
| 9 | MR. RUSH: I can't attend any of them, I won't |
| 10 | be here. |
| 11 | MR. VANDERGRIFF: We will look for a date where |
| 12 | we can get everybody together on that, but hold that |
| 13 | thought for a second, I think I know where you're going. |
| 14 | Do we want to go ahead and approve this particular |
| 15 | motion vote on it, rather? All right. Please raise |
| 16 | your right hand in support of the motion which is a |
| 17 | December vote for the vice chair on an annual basis. |
| 18 | (A show of hands.) |
| 19 | MR. VANDERGRIFF: The motion carries |
| 20 | unanimously of those present, the eight here, and Vice |
| 21 | Chair Johnson is not here. |
| 22 | MR. WALKER: Make sure you get the annual basis |
| 23 | in that deal. |
| 24 | MR. VANDERGRIFF: Yes. |
| 25 | MR. INGRAM: And then also just a point of |

ON THE RECORD REPORTING (512) 450-0342

clarification --

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MR. RODRIGUEZ: I'm sorry, Johnny, I think his motion was pretty clear to be effective 1/1 of 2012.

MR. RUSH: And annually after that in December.

MR. WALKER: But this is not a one time deal, this is annually.

MR. RODRIGUEZ: That's his motion.

MR. VANDERGRIFF: That's correct.

MR. RUSH: It could be the same person.

MR. WALKER: That's correct, it could be the same person for eternity.

MR. VANDERGRIFF: At this point, I do not know about the vice chair, but there are seven of us here who said we will be here at the December meeting, and Chief Rodriguez is not certain that he can be here.

MR. RODRIGUEZ: Well, let me ask you this, Mr. Chairman, I would ask -- and if I need to put this in a motion, I will -- once you confirm 100 percent attendance at any one of our meetings that that's when this item be placed on.

MR. VANDERGRIFF: That's where I thought you were going to go. Do we have the board's indulgence if it's a December meeting if we have a workshop, if we can pull that together, that this be at that meeting? It's a public meeting.

MR. INGRAM: As long as it's posted on the 1 agenda. 2 3 MR. RUSH: When, on the 10th? MR. INGRAM: The 8th is the actual board 4 meeting. 5 6 MR. RUSH: And you can't be here. MR. RODRIGUEZ: Right now it doesn't look that 7 8 It's December 8 the meeting. Right? MR. INGRAM: Yes. 9 10 MR. VANDERGRIFF: Well, we'll see if we end up with a board workshop on a day that we're all here. We've 11 yet to find that day in December, but if that happens, the 12 13 just know that we will move this election to that day. (General talking and laughter.) 14 15 MR. VANDERGRIFF: All right. With that, I 16 appreciate the audience's indulgence as we kind of made some sausage there on an election, but we're going to hold 17 18 that election in December on an annual basis, so that's a 19 good move for us. 20 With that, we're going to go directly into closed session, it's about 11:55 a.m. on November 10, 21 22 2011. We will go into closed session at approximately noon under the following sections of the Texas Government 2.3 24 Code: Section 551.071, to obtain the advice of legal

counsel regarding agenda items 3.B and 5.D, and items

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consisting under E. Chair Reports, and F. Interim

Executive Director Reports, and also Section 551.074 under
the same items I've listed before to discuss personnel
matters.

And for those of you in the audience, I anticipate being in executive session for approximately 30 to 40 minutes, and we'll reconvene in open session after that. With that, we are recessed from the public meeting and we are into executive session.

(Whereupon, at 11:55 a.m., the meeting was recessed, to reconvene this same day, Thursday, November 10, 2011, following conclusion of the executive session.)

AFTERNOON SESSION

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MR. INGRAM: I'll second that.

MR. VANDERGRIFF: A second from Board Member

MR. VANDERGRIFF: It is approximately 1:05 p.m. on November 10, 2011, and the Board of the Texas Department of Motor Vehicles is now in open session. want to note that no action was taken in closed session.

On our agenda items, we have a few items that we think we can take care of rather quickly before we proceed to item 3.B, which is a case on our docket. But the first item is actually 5.D, which is listed as a briefing and possible action item on the TxDMV automation system sourcing, procurement assistance.

And with that, the board is of an understanding that we have an existing relationship with Gartner, a firm that's been helping us in our business process analysis, and they're willing to help us move forward as we get ready for an RFP and to go out to the market in February of next year. So with that, I'll turn it to Board Member Ryan.

MS. RYAN: Mr. Chairman, I'd like to make a motion that the board authorize the interim director to finalize and execute the purchase order with the advice and consent of the board chair.

MR. VANDERGRIFF: Is there a second?

Ingram.

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Do we have any discussion?

(No response.)

MR. VANDERGRIFF: Please raise your right hand in support of the motion.

(A show of hands.)

MR. VANDERGRIFF: The motion carries unanimously.

With that, I will just make note quickly for the audience to know this that we are still in the process, we went out and reposted for an executive search for an executive director. That just started on the 1st of November. It's a 30-day period before we will close it at the end of this month, and then at that point review the search firms who have volunteered their services with compensation to help us find an executive director. So hopefully, at the December board meeting we'll have more to report to you with that.

Also, just note the business process analysis which has been the ongoing process that Gartner has been involved in, the board, along with the staff, has kind of a joint ownership of that process. It's both the as-is and the to-be state of the agency, and very excited about the prospect there. Appreciate many of you in the audience participated from the standpoint of the

industries involved in it as they have been mapping those over the last few months. We certainly expect that to be out here by December, so we're looking forward to that.

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And with that, the only other thing is that we are going to be searching for a date, we've been searching for a date that I think is important to tell you for a board retreat to talk about our ongoing process with respect to the organizational assessment and implementation there. We still have every desire and intention to move forward with that organizational assessment, the board adopted it in total, and we'll be implementing the segments as appropriate in there, and we'll mere it into the strategic planning of the agency, as well as the business process analysis, so that will all be intertwined.

And I will ask if Linda has anything else that she'd like to update on.

MS. FLORES: For the record, my name is Linda Flores. I'm the interim executive director for the agency, as well as the chief financial officer.

In your board material you've got the monthly financial summary for the month ending September 30, 2011. You'll notice that we've reformatted the material to be consistent with the approved operating budget document, and so you're going to see some changes in format in order

to provide you some transparency in our operations. The agency spent approximately \$7-1/2 million in the month of September, and we brought in approximately \$100 million in revenue.

And if you don't have any questions, that concludes the presentation.

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MR. VANDERGRIFF: Seeing none.

MR. RODRIGUEZ: Mr. Chairman, I was wondering about 5.C. Do you have anything on the MOU?

MR. VANDERGRIFF: That was one we did briefly bring up -- and I can't believe I'm wading into this -- that the Oversize/Overweight had covered that we had no MOU to report.

MR. RODRIGUEZ: All right. I didn't bring it up, Mr. Walker.

MR. VANDERGRIFF: With that, we're back to the last item on our agenda, and I appreciate the audience's patience as we've moved around a little bit to accommodate folks in this agenda, and that is 3.B on our agenda. And I don't know that I have to have a motion to do this, if general counsel tells me otherwise, we certainly will do that, but the board will grant the parties the opportunity to speak to the board. They previously said they did not wish to give oral argument, but we certainly would always normally accommodate that, so we will now, and I've talked

to the parties about having ten minutes each to do that.

I'm not sure who wants to go first. Mr. Coffey, I believe you would be.

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MR. COFFEY: I do want to thank you, Mr. Chairman, and the board for giving us an opportunity to speak on behalf of our respective clients. Opposing counsel is here and I'm sure will have something to say as well.

I represent Star Motor Cars. Star Motor Cars is the oldest Mercedes Benz dealer in Houston, he's been selling the products for about 40 years. He has had disputes with Mercedes Benz over the years. The first one that I know of was in the late 1990s when he challenged Mercedes Benz's franchise agreement. Mercedes Benz periodically proffers new franchise agreements to their dealers. The proffered one to Mr. Sireau, he felt that many of the provisions were simply too overreaching, and so he did bring a complaint at this agency under the appropriate statutory provision to challenge that agreement. We colloquially refer to that as the Star 1 case. There have been several over the years so we have to give them a designation.

At any rate, the result of that case was that a number of the Mercedes Benz franchise provisions were ruled illegal by eh predecessor to this agency and the

resulting final order said that Star Motor Cars may stay under its old franchise agreement until Mercedes Benz offers it an agreement that is in compliance with Texas law.

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More recently, my client has challenged two incentive programs promulgated by Mercedes Benz, and what I mean by incentive programs is that Mercedes Benz has a list of operational objectives and those dealers who opt into the program and are able to fully comply with all the operational objectives get what they call bonuses. Those bonuses effectively lower the price of a car, the wholesale price of a car sold by Mercedes Benz to the dealers who are able to comply with the program. My client is unable to comply with the program and so he's buying cars at wholesale for a higher price than many of his competitors in Houston. That is the crux of what my client considers the illegality of these two programs. That dispute, of course, is now over at the SOAH.

They're basically procedural orders, but what they say is that Star Motor Cars is not protected by the statutory stay provision, which I'm going to discuss with you in just a moment, and the two cases should be consolidated, the second case being a termination case brought by Mercedes Benz back against my client approximately two

years into the incentive program case. Whether that termination case is retaliatory or not is immaterial. The statute says, and I'm talking about the statutory stay provision, it says that upon the initiation of a contested case at this agency, no party to the contested case can take any action with affects the rights, duties or privileges of another party before the board. It also says that the parties basically shall preserve the status quo.

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The legislative history to that statute, there isn't much but there is some, and what it says is that this statute is designed to preserve the status quo between parties in a contested case and to prevent any party from destroying or disrupting the business of the other party during the case. That is so that parties who bring these contested cases before the board to enforce the board statutes can do so in peace without having to suddenly fight for their lives while they are at the same time trying to bring the case which challenges and brings to this board's attention these statutes and their application to the facts.

Well, first of all, let me say those of you who are or have been dealers, franchise dealers, you know that all it takes is a hint of a rumor that the manufacturer or distributor is trying to take your franchise and your

employees start heading for the door. They are highly trained individuals, both in the service and the sales side, they are trained to repair and service and sell Mercedes Benz products. If you do not have the franchise anymore, they know that they're out of a job so they start looking. So what does that do? What that does is your most skilled people are gone, you've got to hire new ones, and what happens to your performance under those circumstances? Well, it begins to decline, it's inevitable.

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That, I believe, is one of the reasons why the statutory provision exists, to keep those types of dynamics from developing so that this board has a fair opportunity to analyze whether or not this particular set of facts constitutes a violation of a particular statutory provision.

Once again, the legislative history says it most clearly. It says no party to the board in one of these contested case proceedings is to disturb the status quo or do anything which could kill or disrupt the other party's business. We believe that is precisely what is going on here in this termination case. They are attempting to kill or disrupt Star Motor Cars' business to either scare Mr. Sireau, the dealer principal, off of his incentive program case, or to effectively put the

dealership out of business before he can ever get to trial on the incentive program case. That is why we brought this interim appeal to this board. We want this board to enforce Section 803 of the Code which is the statutory stay provision.

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There is one other reason or ground why we brought this case to the board. That is the Star 1 case which I told you about earlier. In the Star 1 case it said that Mr. Sireau can stay under his '88 car franchise agreement until Mercedes Benz proffers him an agreement in compliance with Texas law. Mercedes Benz, of course, is using the provisions of the franchise agreement as its basis for terminating my client.

We feel that twelve years is long enough for Mercedes Benz to come up with a Code compliant franchise agreement. They haven't done so yet. They have been proffering the same unlawful agreements to their dealers for twelve years now. All we are saying, in addition to the 803 ground, is that if they are going to use the franchise agreement as a basis for termination, it should at least be a lawful franchise agreement, and this board has already determined that it is not. And I'm talking at this point about the '97 light truck agreement which contains the unlawful provisions, according to this board.

Jurisdiction. Your staff, as you now, has

issued a memorandum or a staff opinion on the board's actions that the board should take on this case. First of all, your staff says that on the incentive program case which is called Star 4, on the incentive program case, the director has jurisdiction to determine issues related to that case, but the board has jurisdiction to determine issues related to Star 6, the termination case.

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We agree with the director, in part. We agree that because of the time of filing these two cases, the final order which issues out of SOAH will be under the director's jurisdiction because at the time that Star 4 was filed, the director, Mr. Bray at that time, had authority over contested cases. We do not agree, however, that the staff has jurisdiction over this hybrid case, and by hybrid case I mean that SOAH has consolidated the two cases into another case after this board acquired jurisdiction over Chapter 2301 of the Code.

So our position is that this board has jurisdiction over all the issues in the hybrid consolidated case, except unless the SOAH ALJ issues a final order separately for each case. If the SOAH ALJ does that, then we believe that the final order, whether it's approved or denied in the Star 4 case, would be under the director's jurisdiction, the star 6 case, assuming we have a separate order in the Star 6 case which

would require a de-consolidation of the two cases, if that happens, then we believe that the board would have jurisdiction over that case. But at this point in time, we' believe that the board has jurisdiction over the hybrid consolidated case which was created by SOAH after this board acquired its jurisdiction over Chapter 2301 of the Code.

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Your APA jurisdiction says that there are two grounds on which you can overturn or overrule a SOAH order. Those grounds are misapplication or misinterpretation of applicable law, or misapplication or misinterpretation of prior agency decisions. We believe that the SOAH order in this case which refused to abate Star 6 while the Star 4 case was going on, we believe it offends both of those jurisdictional provisions.

And I want to make one point about that. The APA doesn't say that this board can overturn only a final order of the SOAH, it says any order of the SOAH. So that is one of the reasons why we brought this interim appeal. We feel very strongly that it is under this board's jurisdiction, we feel very strongly that the SOAH ALJ misapplied, misinterpreted applicable law, we believe that your staff has followed suit in suggesting that that SOAH order is correct. We don't understand why the staff has come to that conclusion because they didn't give an

explanation in their staff opinion, they simply said 803 does not apply. Well, how can it possibly not apply when the statute specifically says you can't do anything to affect the rights or duties of parties before the board or anything to disrupt the status quo.

Bringing a determination case and forcing you to fight for the life of your dealership while you are trying to prosecute one of these incentive program cases is beyond the pale, it is beyond the statute, it isn't fair. This is a family-owned business which is simply trying to uphold the law, the law that nobody else will uphold. These types of cases are brought by dealers to enforce the law. The agency itself, through its
Enforcement Division, does not attempt to enforce these dealer protection laws. They did at one time under the MVD but they no longer do so. Now it's up to franchise dealers.

For those of you who are dealers or have been dealers, you know what power distributors and manufacturers have over you, over your businesses through that franchise agreement, and that is why 803 exists, to allow dealers to challenge these actions by distributors and manufacturers, in peace without having to fight for the life of their business while they do so.

And we are simply asking you please overrule

your staff's recommendation and overrule the SOAH orders, which you have the jurisdiction to do, so that Star Motor Cars can finish its case on the incentive program cases. Then if, in fact, Mercedes Benz wants to try and terminate Star Motor Cars, it's free to attempt to do so, it has the statutory right, and we will zealously defend it. But right now this is our case and we should not have to fight for the life of my client's business while we are prosecuting that case.

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MR. VANDERGRIFF: We have some questions for you, but I can ask what kind of time was used, Gayle? Three minutes over.

MR. COFFEY: I apologize for that, I didn't mean to.

MR. VANDERGRIFF: I'm just going to give Mr. Ferguson the same courtesy, so it's 13 minutes instead of ten. And the questions don't count, but the questions I have, based on the arguments that you made, first with respect to the stay and preserving the status quo, what in the law does not allow a manufacturer to proceed with a termination? I think the argument was they were doing it under the old agreement, that they're not trying to terminate this franchise under the new agreement, and that was a point that you made. I'm not sure I follow that, understand that.

 $$\operatorname{MR.}$ COFFEY: I was a little unclear on that. Let me clarify.

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My client actually operates under two franchise agreements, a 1988 car franchise agreement and a 1997 light truck agreement. The agency, way back when, determined that a number --

MR. VANDERGRIFF: I'm familiar with all that, but the termination action, I think, is under those old agreements and they haven't reached a new agreement, but yet many Mercedes dealers, most, I guess, have signed the new agreements that have come forth since then. So your client is operating under the old agreement and I think the termination is proceeding, or the effort to terminate under that old agreement. I'm not sure if I'm mistaken in that belief.

MR. COFFEY: It's actually proceeding under both agreements. They are attempting to terminate the '88 car franchise agreement which this agency has never said is unlawful, they are also attempting to terminate the 1997 light truck agreement which this agency has explicitly contains unlawful provisions. So that is our point on the light truck agreement, if, in fact, we have an agency order that says it's unlawful, how can you use it as a basis for termination.

But the primary ground we have, Mr. Chairman,

is 803 which says explicitly, and I can read the statute for you, it says nobody takes any action to affect the rights or duties of a party before the board, or anything which would tend to render ineffectual a board order. And that, of course, is exactly what a termination case is designed to do, it's designed to destroy your rights in the franchise and it is designed to make ineffectual any board order that might issue on the incentive program case in Star's favor because Star Motor Cars, if it wins the incentive case and loses the termination case, is not going to be a dealer any longer, he is not going to benefit from whatever order in his favor comes out of the Star 4 case.

MR. VANDERGRIFF: And I understand that. But what we don't know, it's not before us, it's not what we're being decided is what the grounds might be for termination.

MR. COFFEY: Right.

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MR. VANDERGRIFF: And are you saying under any circumstances that a stay is put out there and that a manufacturer cannot proceed with a termination under any circumstances?

MR. COFFEY: It's simply a matter of timing.

They can proceed with their termination case after the statutory stay expires. It expires upon a final order in

the Star 4 case. Now, I know that over there at SOAH, MBUSA said, Well, oh, hey, we couldn't do anything then if a dealer was doing something illegal. Of course, they're trying to taint my client with that argument and they haven't even alleged anything illegal.

MR. VANDERGRIFF: And I'm not alleging that either, but I'm just saying are you telling us that the intent of that stay is that literally a particular -- and I'm not saying this is your client, but a particular dealership can be so badly underperforming in the marketplace and be so devoid of capital, have such a deficient facility that a manufacturer could go out -- and again, I'm not suggesting that the incentive claim doesn't have merit but that they could file some claim that they all of a sudden protects them from a manufacturer taking action. Is that the position that I understand you to be taking?

MR. COFFEY: Our position is that the statute operates independently of any set of facts, it simply says nobody takes any action to affect the rights or duties of the other party or to tend to render ineffectual a board order. If, in fact, they have a dealer that they thing is doing something unlawful, there are plenty of places and plenty of mechanisms that can be used to stop that, but to try and terminate them in the middle of a case where the

dealer is trying to enforce the laws that protect him, and ultimately his family who's going to end up with that dealership, that is stopped by the statutory stay.

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Now, if they know of something illegal that any dealer is doing, all they have to do is go to the police, they don't need to file a termination action. There are plenty of ways that they can remedy that, but those are not the facts in this case. They try to imply through innuendo that, hey, that might be what's going on here, but they certainly haven't pled anything like that. What they have pled is low sales performance, low CSI, facility deficiencies and things like that, they have never said anything that brings into question my client's integrity or honor or his compliance with the law.

MR. VANDERGRIFF: I appreciate that. The last thing I have in question is the jurisdiction of this body that there was new language passed in September -- I know that you filed a week or so before that -- but new language passed in September that basically struck the board from the provisions in that particular section of the Code regarding any hearing to modify, vacate or clarify the stay. And can you address that for the board?

MR. COFFEY: Yes, sir, I can. The new legislation -- and I'm not sure where that legislation stemmed from, but it did muddy up the jurisdiction of this

board over these interim type appeals. I don't know if that was the intent of the legislature. Don't get me wrong, I'm not saying the legislature said you couldn't entertain them, but it took out some of the language that we would rely upon to invoke this board's jurisdiction on an interim appeal. Ultimately, I think that's a decision that this board has to make in some future case, because as you noted, Mr. Chairman, we are under the old law, the new law doesn't apply to us.

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MR. VANDERGRIFF: Does anyone else have any questions?

MS. RYAN: I have a question.

MR. VANDERGRIFF: Please.

MS. RYAN: Can you clarify, the statement was made that the statute says that it's any order, not a final order?

MR. BRAY: Yes, that's what it says.

MS. RYAN: It says any order.

MR. BRAY: It does.

MR. COFFEY: Well, it says order, an order of the SOAH. It doesn't confine it to a final order. A final order is a term of art that's used all through the APA and everybody understands what it means. Order is a general term, it can refer to interim orders, it can refer to procedural orders, it can refer to final orders. My

point was that your APA jurisdiction is not confined 1 explicitly to final orders, it is any order is under your 2 ultimate jurisdiction to determine whether or not it 3 stands or falls. 4 MR. BRAY: To be real precise, it doesn't say 5 6 any -- I put a Y in there -- it says an order. 7 MS. RYAN: Okay. And then did I understand you 8 correctly in stating that because the cases were combined, 9 you're stating that it is your opinion or understanding that the outcome, the recommendation from the ALJ would 10 come before this board and the decisions would not be 11 divided? 12 13 MR. COFFEY: If it stays consolidated, that is precisely my opinion. I don't see how you can get around 14 15 it. We have a Star 4 case, we had a Star 6 case, now we 16 have a combined Star 4/Star 6 case. If you get a PFD, a 17 combined PFD, how are you going to decide whose part is which? I don't see how you can. I believe it's under the 18 19 board's jurisdiction because that consolidated case was created after this board acquired jurisdiction. 20 MS. RYAN: And Brett, would we follow that? 21 MR. BRAY: I don't know whether you would. 22 MS. RYAN: Is there anything procedurally that 2.3

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MR. BRAY: Not that I can find. I don't know

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tells us that?

| 1 | if you would agree with that. |
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| 2 | MS. RYAN: I understand. |
| 3 | MR. BRAY: I have concerns about that. |
| 4 | MS. RYAN: Its not clear cut. |
| 5 | MR. BRAY: Well, it's fairly clear cut under |
| 6 | House Bill 3097 that actions that would include Star 4 |
| 7 | operate under the old law which would be the division |
| 8 | director making the decision and actions after are the |
| 9 | board's prerogative. |
| 10 | MS. RYAN: Nothing clear on a combination. |
| 11 | MR. BRAY: The reasons I have concerns about |
| 12 | it, my issue would be that the effect of that means that a |
| 13 | SOAH judge can determine who the final decision-maker is |
| 14 | going to be, irrespective of what the law says. |
| 15 | MS. RYAN: Thank you. |
| 16 | MR. RODRIGUEZ: Brett, question. Can we remand |
| 17 | back to SOAH, first of all remand, and number two, to de- |
| 18 | consolidate? |
| 19 | MR. BRAY: I think so. |
| 20 | MR. VANDERGRIFF: I do think before you do |
| 21 | that, do you have any further questions of Mr. Coffey? |
| 22 | MR. WALKER: I do, David. |
| 23 | MR. VANDERGRIFF: Mr. Walker. |
| 24 | MR. BRAY: And I'd like to clarify that answer |
| 25 | a little more, but go ahead. |

ON THE RECORD REPORTING (512) 450-0342

MR. WALKER: I haven't ever looked at your franchise agreements, and this is kind of confusing to me because there are two franchise agreements, and in the business that I'm in, you often sign new contracts with your customers and so forth, but generally when you sign the next contract, it says this contract takes precedence over any and all other contracts that existed in the past. So what does the Mercedes contract number two say with regards to franchise agreement number one?

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MR. COFFEY: I do not recall that there is a specific provision in there to that effect, Mr. Walker, but there may very well be. But if it is, we're talking about two different lines of vehicles. In other words, the way these franchise agreements are structured is that you have a car agreement and it has an addendum to it which says you are only authorized to use our logo and sell our vehicles for this particular line of vehicles, and it's cars in the case of the '88 agreement.

The '97 light truck agreement was promulgated by Mercedes Benz when it was launching its SUV line. They wanted to call it a truck line for reasons of their own which aren't really pertinent to all this. My client did not want to spend the next three years litigating whether or not under this agency's he has the right to sell these SUVs as well as the cars, so he signed the '97 light truck

agreement. It was the 1997 light truck agreement which was declared unlawful, not every part of it, but many of the termination provisions and many of the other provisions, because they simply did not comply with Texas law.

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So you have really a unique situation here, Mr. I've never seen anything like it. You have a Walker. dealer under a 1988 car agreement, a 1997 light truck agreement, he has challenged every other car and light truck agreement that has issued from MBUSA since then, and in fact, invalidated many of the provisions in the light truck agreement in what is called the Star 2 case which was a case that issued in 2002 or 2003. Judge Terry Johnson did the PFD in that case, and I believe Mr. Bray signed it as the executive director. And that is also some of the unlawful provisions that we say you cannot use to terminate us because it's res judicata, this agency has already determined that they are unlawful, you can't use them as a basis for termination, and that is yet another dispute that is going on at SOAH that hasn't really been resolved yet, but it will be in time. That's under their jurisdiction and we understand that.

MR. WALKER: So it would be your contention then that there are two franchise agreements and that they cover two distinctly different product lines, and I know

that we've looked at a case in the past where every RV 1 vehicle is a different franchise, but how do we look at it 3 in the car business, Brett. Does a franchise agreement cover all the cars, or does it cover each individual line 4 of cars? 5 6 MR. BRAY: When you say line of cars? MR. WALKER: Well, he's contending that there 7 8 are two franchise agreements here. MR. BRAY: And there are. 9 10 MR. WALKER: Well, what do the franchise 11 agreements cover? MR. BRAY: It depends on the factory and the 12 13 dealer relationship. The reason I'm being careful with your question is because there's a statute that requires a 14 15 factory to give a dealer every vehicle within the line, and there have been cases that talk about what's included 16 17 within the line. But if lines are separated by car and truck, then that's two franchise agreements. 18 19 MS. RYAN: Usually it's by registration, so light truck it's registered as a light truck, and then 20 cars, and they're usually broken out in that segmentation. 21 So a car can be any car falls under the one, and then 22 light trucks as a category, not a line like you're 2.3

ON THE RECORD REPORTING (512) 450-0342

MR. WALKER: But how can you run a business

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thinking with the other.

when you have multiple agreements and one agreement may 1 disagree with this agreement, so how do you say this is how we conduct business because there's contradictions in 3 the two agreements, but they're all under the same house? 4 Does that make sense to you? 5 6 MR. VANDERGRIFF: Is this an appropriate line of questioning for this part? Are we delving into like a 7 8 philosophical session about the insanity of contracts, or are we on the case? 9 10 MR. WALKER: I think it's a huge part of the argument here, this franchise agreement, because the 11 dispute really is that there's multiple agreements out 12

there opposed to which one is prevailing as to where we are in this case.

MR. VANDERGRIFF: Do we have further questions for Mr. Coffey at this point?

MR. INGRAM: I have one.

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MR. VANDERGRIFF: Okay. Please.

MR. INGRAM: A point of clarification. said that Mercedes has never changed the contract since '97 on the light trucks in twelve years, but you mean that they've never changed it to one that you agree with.

MR. COFFEY: I'm saying that they never changed it to one that this agency agrees with. agency declared numerous provisions in the '97 contract unlawful. They have continued to put their dealers under those agreements for the last twelve years. I don't know exactly what explanation they give their dealers because it was fairly widely known that the Mercedes Benz contract had been declared illegal way back when.

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Most dealers, and you dealers on the board or former dealers know that I'm telling the truth on this, most dealers will not challenge their manufacturers or distributors because of the power and control that they have over the dealers. My client is one of two or three dealers pretty much in the history of this agency who has insisted upon compliance with the law by the manufacturer, and he has paid dearly for it.

Right now, as I said, he's fighting for the life of his dealership because we believe that that termination case was brought in retaliation for the man y times that my client has challenged the manufacturer. But whether it was brought in retaliation or not, the statute protects my client.

MR. INGRAM: I'm sorry. I'm still getting kind of a fuzzy answer on this. Since '97 has Mercedes brought a light truck agreement that differs from the one that your client currently is under?

MR. COFFEY: What I can say for sure, Mr. Ingram, is that the provisions that this agency declared

were unlawful have been perpetuated in agreement after 1 agreement after agreement. Whether or not there might be 2 3 some slight change in some of the agreements from the '97 agreement, I don't really know. I haven't studied them 4 that closely. 5 6 MR. VANDERGRIFF: Maybe Mr. Ferguson, when he comes up, could answer that question, but I'll bet my 7 8 bottom dollar that they have had changes in the agreement -- I have not been a Mercedes Benz dealer -- but 9 10 they have not made a change that's acceptable to his 11 client to sign. 12 MR. PALACIOS: Mr. Chairman, I have a question 13 for counsel. MR. VANDERGRIFF: Please. 14 15 MR. PALACIOS: Is there a process in place that 16 would have provided Mercedes Benz an opportunity to have 17 the stay lifted before they proceeded into the termination proceedings? 18 19 MR. BRAY: Yes. There is a process and it's what you just called it, it's a motion to lift stay or 20 modify stay. 21 MR. INGRAM: And that would be made under the 22 SOAH? 2.3 24 MR. BRAY: Yes.

ON THE RECORD REPORTING (512) 450-0342

MR. PALACIOS: So I'm under the assumption that

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that motion was never made?

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MR. COFFEY: It was never done. That has been one of our complaints. We have said all along that if they want to come after us during our case, they have to get the stay which issued in Star 4 lifted, and SOAH, I suspect, would be the appropriate place to do that. They did not bring such a motion, they simply hauled off and filed a termination case against us. So you're right, there is a mechanism, they elected not to employ it.

MR. VANDERGRIFF: Do the board members have any further questions of Mr. Coffey?

(No response.)

MR. COFFEY: Thank you for the opportunity to speak to the board members, sir.

MR. VANDERGRIFF: Mr. Ferguson. And you also have 13 minutes, exclusive of questions.

MR. INGRAM: You don't have to use it, though.

(General laughter.)

MR. FERGUSON: Believe me, I don't want top.

The APA instructs that once a state agency has referred a matter to SOAH for a hearing, that agency is forbidden to "take any adjudicative action relating to the matter until [SOAH] has issued its proposal for decision or otherwise concluded its involvement."

My name is Buddy Ferguson, and I have the

ON THE RECORD REPORTING (512) 450-0342

privilege of appearing before you today to represent

Mercedes Benz USA. As you notice, I have no horns coming
out of my head, I have no pitchfork, and we're not here
about retaliation.

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Mr. Coffey's client has been in litigation with my client for 15 years. I've got three kids who have already been in college, I've got a fourth one coming. Believe me, it pains me to move to terminate this dealer, but we're not terminating because he sued us, and if you tell us we have to wait till we're not in litigation with this dealer, you may see one of my children up here because it's been non-stop continual litigation.

I'm not saying the man has done anything illegal, but if you look back in your records, your predecessor board terminated this dealer for refusing to buy a sign with the new SAAB trademark, and ended his 20-something years as a SAAB dealer, and one of the board members said, I wish people had spoken truthfully about what their intentions were in that board meeting. His performance is so bad for us, I don't even have to tel you other than it's the worst in Texas.

If you recall back to your Volvo case you had a few months ago, in the meeting here the protestant's expert, Dr. Emmanual did an analysis in that case to show you what the normal dealer would look like, except he took

one dealer in Houston out because it skewed the average. You know who that dealer was? Star Motor Cars. Their performance was so low for Volvo, he didn't think it was right to include it, apparently, because he didn't. That's where we are.

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Now, this morning I got up, I wanted to get here early, I thought there might be a big crowed. So as I walked into the building and said, I'm here for the Motor Vehicle Division meeting, the security guard looked at me and said, What? And I said, Isn't this the Reagan Building? He said, No, sir, this is the Greer Building. And I went, Yes, it is. And that's what this case is about now; They're in the wrong place.

Your question, Member Palacios, about could we have filed a motion to lift stay, you know what that would have been filed in? Star 4. You know who Star 4 goes to?

Ms. Cost. It doesn't come to you. But more importantly, we didn't have to file a motion to lift stay. You know why? Because the stay does not apply to this. We have not taken away his rights, we have not done anything to impact his rights. He has exercised his rights, he has filed a protest, he is getting his due process and protections that are under this Code.

If you say that that stay applies that far, not only are you wrong, but let me give you an example.

Hypothetical. Dealer has a warranty audit, \$1,000 worth of claims that the manufacturer says we're going to charge you back for these. Dealer says under the Code I'm going to protest, and he has a right to that. During that protest a customer comes in while the protest is pending and comes in and gets into heated argument with the dealer. Dealer argues with him, customer argues with him, who knows who's really at fault, but finally the dealer says, You need to leave, I'm calling the police.

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The customer leaves, drives down the road. The dealer goes and says, I just want to talk to him. Before he went to talk to him he went and got his gun. He drove down the highway, put his car as such that the motorcycle had to move to the shoulder, gets out with his gun and confronts the customer. He comes back to the dealership where the police are, he explains what he's been doing, and guess who gets arrested, the guy with the gun.

Manufacturer brings a termination action saying we're not going to have dealers who are brandishing guns on customers and chasing them down the road. While that case is going on, the dealer gets charged with taking information he learned from a grand juror on a drug investigation and telling a third party who's the target who then slips across the border into Mexico, disappears. The dealer gets charged with all sorts of crimes but he

is ultimately only convicted of one: lying to the FBI because he told the FBI he never talked to the target but they had the cell phone records or something to prove it.

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Okay. The federal judge sentences him and part of it is house arrest and all this. Dealer tells his wife: I'm selling stuff and I'm getting out of the country, I'm tired of this. She calls the authorities and says, I'm not having any part of this and I don't want him hurt. They arrest him, and while he's in jail he tells his cell mate: I need to hire somebody because I want to kill my wife.

Okay. Now, that's a crazy hypothetical, isn't it? I mean, Member Walker is looking at me like what did you have for lunch. That is a crazy hypothetical. You know the only part of it that's not true, that there was a warranty audit. Everything else I told you from chasing the customer down the street to trying to hire somebody to kill his wife and happened in a termination case I had.

I'm not saying that Star Motor Cars has done anything illegal, but if you tell a manufacturer that they cannot touch a dealer while he's in litigation with them, then every time they send out a cure letter like we did in this case to the dealer and said you need to improve your performance on these things, if I'm the dealer, I'm going to find something to sue them for and I'm going to keep it

going because then they can't terminate me.

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MR. VANDERGRIFF: If I agree with you on that point, though, why didn't you just go file a motion to lift the stay? I know that it would go to SOAH. Why didn't you do that and avoid this argument?

MR. FERGUSON: Because we didn't believe the stay applied to this, and that's what SOAH agreed with us and that's what your staff agreed too. In their executive summary, the say the stay does not apply. All we have done is exercise our right, we sent him notice that we're going to terminate, and the dealer protested, he exercised his rights, and so that's where we are. We did not believe that the stay applied at all.

Member Rodriguez, you asked a question about could you send it back to SOAH, remand it and tell them to un-consolidate it. The idea of consolidation was not something I dreamed up, it came up in a discussion of counsel and it was opposing counsel's idea. And I went to my client and we thought it might make sense to save money, save time and get this over with one way or the other, because these parties obviously have had a history of litigation, let's get it to a decision, let's move forward.

Unfortunately, Star Motor Cars decided it did not want to do that, but we went ahead and made our

motion. I don't know that SOAH is necessarily going to issue one PFD. I saw the comment in the executive summary and it made me think I need to ask the SOAH judges to please issue two separate proposals for decision. Even if they make the same fact-findings or similar ones in both, they probably should issue separate ones so that we can accommodate the board. That's a very good point the staff brought up that I honestly hadn't even considered at that point. But we can certainly do that and we will do that, we will ask them to issue separate PFDs.

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The other issues that are before you, jurisdictional, I don't want to sound too much like a lawyer, but unfortunately, that's what I've been hired to do today. There was never a request for a cease and desist order, so you don't have jurisdiction under that. They never moved to clarify the stay so there's nothing to consider there. If they had, they would have done it in 4, and I would submit to you that staff says that goes to Ms. Cost or to the executive director of that division. So once again, just like I was this morning in the wrong place, they are in the wrong place. They have rights, those rights are being protected.

Chairman Vandergriff asked a question about the changes in the September law. I think the changes in the September law do dictate that this board does not have

jurisdiction, and I do think that that amendment is effective in this proceeding, and I think that it's that way because the Texas Supreme Court said so. In Subaru of America v. David McDavid, there was a change in the law and the Supreme Court talked about that there's general presumptions that statutory amendments apply prospectively, and do not apply when the amendment -- that those general presumptions do not apply when the amendment is procedural or remedial or it "simply changes the tribunal to hear the case." That's what the amendment was that was effective September 1, they struck the phrase "initiate a proceeding before the board." They struck that, and with that, they struck your jurisdiction. It doesn't mean I don't like you, that's what the legislature did.

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So I'm all for protecting rights and they're exercising their rights, and there's a lot of things that have been said today that I disagree with that I won't bore you with. The '97 agreement has not been declared illegal. The '97 truck agreement has never been before this board. What was before this board was the '97 passenger car agreement that Mr. Sireau refused to sign. And he won on part of that case, he lost on part of that case, but the final order was he continues under the '88 agreement until you present him one that's in compliance

with the Code. We have offered him some that were outside the norm. He didn't find those acceptable.

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He was offered the 2002 light truck and passenger car agreement because it was mailed to every dealer in a mass mailing and he protested that. And in that language there were certain rulings made about the 2002 agreement, but those were applicable to whether he had to sign 2002 passenger car or light truck. Never has this board said that his '97 agreement is illegal. there terms in 2002 that match up with the '97? Absolutely. And you know what those terms are the they complained about? And they complained about this at SOAH. The Mercedes agreement doesn't say that when you're going to terminate me you have to give me 60 days notice under the law. Well, guess what, when we gave him notice in this case, we followed Texas law to the T, which I told the board before we would do, we followed it to a T. So his procedural illegality that he claims relates to the 2002 agreement and we complied with that in the termination in this case.

Just to tell you how my client is trying to treat or sending these things out, we inadvertently sent him the 2007 agreements, and I wrote him a letter saying we call it back. He protested that and the ALJ pulled it back and said, NO, they pulled it back; it may have been

stupid but that's not bad faith.

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So that's really what this is about. If you have any questions, I'm happy to answer them if there's something I can clear up.

MS. RYAN: I have one. Can you clarify for me, you said it's your opinion that the stay does not apply, and can you tell me why? You u may have said but if you could repeat it.

MR. FERGUSON: I think the stay would apply, for example, if we were terminating him and we said we're not going to ship you any more cars. He's got a right as a dealer to get cars, and once he files a protest of his termination, I can't stop sending him cars because to do that would put him out of business and would moot proceeding forward in the case.

I don't believe that if we win the termination case and lose the incentive case that he doesn't have something there in the incentive case. He can win or lose the incentive case independently from the termination case. They are not bound together as far as a result.

MR. VANDERGRIFF: The problem seems to be that if he loses his standing as a dealer because he's been terminated, how is the incentive case going to really continue?

MR. FERGUSON: Well, because they're on the

ON THE RECORD REPORTING (512) 450-0342

| 1 | same track they're going to be decided at the same time. |
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| 2 | But I ask you this, if he wins the incentive and the |
| 3 | termination case was sitting here over on the side, how |
| 4 | long do I have to let him operate before I get to get back |
| 5 | in the game? On day, is that enough, two days, three |
| 6 | days, four days? It makes no sense, the argument makes no |
| 7 | sense at all. |
| 8 | MR. RODRIGUEZ: Is there any retro impact from |
| 9 | the incentive case? Is that what drives the incentive |
| 10 | case? |
| 11 | MR. VANDERGRIFF: You've got a point, if |
| 12 | they're being decided concurrently, there's no longer a |
| 13 | reserved [indiscernible]. |
| 14 | MR. RODRIGUEZ: Is there any recovery? |
| 15 | MR. VANDERGRIFF: If they won that case there |
| 16 | could be some cash recovery. |
| 17 | MR. RODRIGUEZ: That's what I'm saying about |
| 18 | the incentive case. |
| 19 | MS. RYAN: And it would still be paid even if |
| 20 | they weren't a dealer if they won. Correct? |
| 21 | MR. RODRIGUEZ: Right. |
| 22 | MR. FERGUSON: It's similar to cases that I've |
| 23 | seen where dealers have terminated and there's been an |
| 24 | argument over what was proper to be bought back as far as |
| 25 | inventory, was a car new or was it used and all that, and |

those orders still instruct the manufacturer to buy back the vehicle and pay the dealer.

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MR. PALACIOS: I'm puzzled by, again, this issue on the stay. As I understand it, the stays are in place to protect dealers by retaliation from manufacturers, although it doesn't give them, I guess, free rein to commit egregious acts and so forth. I don't think they should be afforded those protections. But I'm still puzzled as to why a motion to lift the stay was never enacted, and you've mentioned a couple of reasons.

To me it's irrelevant whether it's the division director, SOAH, or even this board that has the authority to lift the stay, I think there's a process in place to have it lifted for a reason, and I'm just, again, puzzled as to why you decided to bypass that.

MR. FERGUSON: I think the answer to your question is we may be on different pages as to whether the stay applies. The stay does not apply, in not only my opinion -- and I'm biased -- it doesn't apply per the SOAH judge, and it doesn't apply pursuant to this staff. And so there is nothing to move to modify; if the stay doesn't prevent me from doing something, I don't need to go in and ask for it to be clarified. That would be my answer, sir.

MR. VANDERGRIFF: Any other questions?

MR. FERGUSON: Thank you for your time.

MR. VANDERGRIFF: Thank you very much. 1 2 I'm happy to submit this -- I shouldn't say 3 happy -- to the puzzled faces of the board. MR. RODRIGUEZ: Are you ready for a motion on 4 this? 5 6 MR. VANDERGRIFF: If you're ready to provide 7 one. MR. BRAY: I think I'd like to work on my 8 answer before he does. 9 10 MR. INGRAM: Remind me which answer. MR. BRAY: I think he asked me do you have the 11 12 authority to send it back, and I said yes. And I'm still 13 sort of leaning that way but this argument about whether the amendments that took effect September 1 apply or not 14 15 causes me some concern. I've not analyzed that too much, 16 but I wonder if we don't want to hear from the staff on 17 that question. MR. VANDERGRIFF: I would. In fact, I've 18 19 turned to that, where I found it in the briefing materials about that, because 2017 was a particular bill of interest 20 I'm just curious about that. Ms. Cost. 21 MS. COST: For the record, I'm Molly Cost, the 22 director of the Motor Vehicle Division. And I apologize, 2.3 24 it was kind of hard to hear you from the back, Mr. Bray,

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so what was the question?

MR. BRAY: I guess really I don't know if it's a question so much -- well, I quess the first question would be, and I'm sure the board has questions, but I quess the first question would be how do the amendments to 2017 or from 2017 play into this controversy. MS. COST: Specifically the amendments that

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changed language in the statutory stay provision.

MR. VANDERGRIFF: 803(c) is very clear: ''A person affected by a statutory stay imposed by this chapter may request a hearing" -- that's underlined --"initiate a proceeding before the board" is struck, "to modify" -- and then it goes on to say, obviously, "to modify, vacate or clarify the extent and application of a statutory stay."

MR. BRAY: I remember this was actually one of our wish list changes, and the reason being that "initiate a proceeding" was always problematic because it would cause a whole nother docket number to be created as opposed to just request a hearing within the existing controversy.

> That's right. MS. COST:

MR. VANDERGRIFF: That's what I'm getting to, it's kind of our bill, so what did we intend?

MS. COST: Exactly what Mr. Bray just said, that that language had caused problems in the past where parties would file an entirely new complaint with a \$200 filing fee and ask for a new docket when they had a case going on, and a lot of this I'm speaking to was when we had in-house ALJs, what we would do is just say, No, no, you just need to go to the ALJ that's hearing your case and make your motion there with regard to the clarification or modification or lifting of the stay. And that is what ended up procedurally, by practice, happening and we just wanted to make the statute a little clearer that the parties didn't have to initiate an entirely new proceeding to do that.

MR. VANDERGRIFF: Well, our intent in pursuing this legislative change was to have them basically request a hearing back before the body who was hearing the case.

MS. COST: That's correct.

MR. VANDERGRIFF: Which is SOAH.

MS. COST: Yes.

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MS. RYAN: Well, no. Was it SOAH? Because the stay would have been on 4. Correct?

MS. COST: SOAH is still hearing 4. It's the final decision-maker that's different.

MR. VANDERGRIFF: The final decision-maker is the board or the director, but the purpose of this section 2301.803(c) and the change there, was that to send everybody back to SOAH?

MS. COST: No. All the intent of it was, at least in my head, was to say you don't have to file a separate docket to have the stay that was initiated in docket 1 clarified, lifted or modified, you can do it in docket 1. And the board does have a rule that talks about statutory stays that was actually modified after this agency came into place. Now, granted, it was also modified before this language was added to the statute, but the rule specifically states that a party can come to, even after they've gone to the ALJ and gone through this motion, that they can still come before the board with a request to modify, lift or clarify the stay.

MR. BRAY: That's true even if it's a director case.

MS. COST: I agree.

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MR. RODRIGUEZ: And that's the only reason we're here. Right? You've got a couple of cases going on at SOAH and in the process of rendering an interim decision, they have the ability to basically interrupt that by bringing a challenge to that interim, and that's what they're asking us to do today is that we lift the interim decision, and if we deny that, they are simply back at SOAH.

MS. COST: Yes.

MR. BRAY: Well, they're back at SOAH either

ON THE RECORD REPORTING (512) 450-0342

way, it's just how they're back at SOAH. 1 2 MS. RYAN: Can I ask one question? Are you 3 going to make a motion? MR. RODRIGUEZ: I would if it's okay. 4 5 MS. RYAN: I have one question. 6 MR. VANDERGRIFF: I've still got a question. Go ahead, please. 7 8 MS. RYAN: So Molly, are you aware or can you 9 give us an example of a time when a stay was ordered and 10 in this case a manufacturer went back, had it lifted to move forward with the termination? Is that a normal 11 process that does occur? I don't want to say on a regular 12 13 basis because they don't happen on a regular basis. MR. BRAY: Can I interrupt? I'm not so sure 14 15 about -- it may be hard to remember those exact facts, but 16 I wonder if this isn't part of your question if she can 17 remember or if we're aware that statutory stays get lifted or modified on occasion during contested cases. 18 19 MS. RYAN: Well, I think they would. the debate is -- and I understand there's a process, and 20 the question was there's a process in place to do this. 21 My question is is there anything in place that would say 22 it should be done, is it a known fact? 2.3 24 MR. BRAY: That talks specifically about for a

termination.

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MS. RYAN: For a termination. That's what I'm trying to find out: is it clear that you would need to do that. And I just don't know.

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MS. COST: I don't think there is anything that's clear that says if you're in a case, dealer-manufacturer are in a case and the manufacturer wants to subsequently take termination action against the dealer, that they are required to come and ask for a lifting or a modifying or a clarifying -- could be either of those -- of the statutory stay in order to do that. I really can't, off the top of my head.

MS. RYAN: And I'm not trying to put you on the spot.

MS. COST: There's actually one case that did come to mind but it's so procedurally bizarre. The manufacturer had actually attempted to -- they hadn't actually issued the notice of termination and the dealer went ahead and filed a complaint because they knew it was imminent, and eventually the stay was -- they asked for the stay to be lifted so they could go ahead and file the official notice of termination and the case could move on. But that was a very strange procedural case.

MS. RYAN: So it's easy to understand how an opinion on both sides could be taken, I guess, is what I'm hearing. There isn't anything clear.

MR. VANDERGRIFF: Walk me through the logic of how -- you have an incentive case -- and I'm not saying that you don't have to exist with a really poor performing dealer, I'm not trying to suggest to Mercedes Benz or anybody else they have to do that, but walk me through how Star 4 and Star 6 are not connected enough that when you have an action pending here where a settled interpretation of rule or law exists that says you can't -- there is a stay in effect, that why now you have a new action, Star 6 that you can try to terminate from here. I'm trying to understand the logic of how that doesn't fall under the stay provision.

MS. COST: Sure.

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MR. VANDERGRIFF: And again, I'm not suggesting they can't go move to terminate, just procedure, that way they're doing it.

MS. RYAN: Right. And I think in an abundance of caution had I been Mercedes Benz, I would have asked, but I don't think -- I keep using the words "as a matter of law" -- but I don't think it's automatic that when a statutory stay is issued, let's use this case, in Star 4 that that automatically means that a subsequent notice of termination can't issue from the manufacturer.

MR. VANDERGRIFF: And I don't disagree with that, but wouldn't the process be to try to make sure you

eliminate the statutory stay, the presumption there and move forward with the termination versus file a separate termination and act as if this other case doesn't exist?

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MS. COST: And like I started out, I think it would have been procedurally nicer had Mercedes Benz done that, but I don't think it is a settled question as to whether or not they had to do it. It can happen right now if Star will file a request to have the stay clarified to determine whether or not the termination -- issuing the notice of termination was a violation of the stay in Star 4. They can get that issue before the agency.

I don't even think -- and I know there's some disagreement on this -- that if the termination case were to somehow be decided before the incentive case and the dealer loses the termination case, they still have standing, they were a franchise dealer when Star 4 was initiated, when it was filed when that cause of action arose, they could still move forward, get the findings out of this board that Mercedes violated the law and then go take that to district court and get damages. It's not pretty, it may not be practical, but I think it's legal.

MR. VANDERGRIFF: Additional questions?

MR. COFFEY: (Speaking from audience.) Mr.

Chairman, if I can point out that your microphones seem to be off.

MR. VANDERGRIFF: They're off again? 1 apologize. I know I also have an emergency button that 2 3 calls in a bunch of police help. That looks like that's the emergency button, I will not push that one. 4 apologize. 5 6 (General talking and laughter.) MR. BRAY: I think I'm building on this 7 8 question but at least for my edification, you said that you would have you'd been Mercedes, out of an abundance of 9 10 caution, possibly gone with the lift stay route but you don't think they had to. And my question is, and based on 11 your answers to Mr. Vandergriff, how do you see issuing a 12 13 termination is not committing an act that affects a legal right of Start? 14 15 MS. COST: It's a legal right that they have in 16 the incentive case. MR. BRAY: You think it's limited to the 17 incentive case? 18 19 MS. COST: Yes. MR. INGRAM: I don't understand what you mean 20 by limited to the incentive case. I mean, I don't 21 understand saying that it's only limited to one. 22 MR. BRAY: Don't look at me, I didn't say it. 2.3 24 MS. RYAN: Can you clarify, Molly, why you feel

that way? Can you help us understand? We've got several

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people that aren't sure.

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MS. COST: Sure. The stay is in place to protect the status quo because of the filing of that case. So there's an incentive case, they're filing a complaint against that. A lot of times what happens in those cases is that the manufacturer can't impost that incentive program on the dealer that's filed the complaint.

Sometimes they actually have to stop it for all of their dealers until the case is fully litigated, so we're going to preserve what was happening before the case was filed so that the case can be litigated and so that the ultimate outcome of that case isn't affected by things that the parties do after that.

I have a hard time stretching that to mean that there can't be normal business relations between the manufacturer and the dealer because of this one thing that they've complained about. And again, absolutely not talking about Mr. Coffey's client, but Mr. Ferguson's point to well, what if something really happens and the manufacturer really need to take action against the dealer.

MR. VANDERGRIFF: And I agree with that, I just am having a hard time with the fact that you've got a settled proposition that when action is taken to protect the whistle blower, if you will, if that's what you would

call it -- and I'm not saying they're right or wrong on the incentive case, that's not before us -- but that matter, that that then doesn't trigger that stay that gives me them an umbrella of a presumption of protection which could be easily pierced if the manufacturer brings in a case saying this operator needs to be terminated for X, Y and Z. I'm just having a hard time why that doesn't give them some presumption and that shouldn't have been the path that had been pursued.

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MS. COST: And I completely understand, I guess I keep going to back to that to me it's not an automatic violation of the stay.

MR. VANDERGRIFF: So your point is might have been a more prudent business practice but they can do otherwise.

MS. COST: Might have kept us from this, but.

MR. VANDERGRIFF: But if that's the case, then if you still have this presumption of a stay, then why wouldn't this board have some role in that process because otherwise they can go move to terminate, avoid all of that, and eliminate them and they're gone before that ever comes before the final decision-maker.

MS. COST: Well, and I guess there's where the leal and the practical maybe kind of rub up against each other. I still think that the dealer, if they filed -- in

this case, Star still has standing under Star 4 to pursue that incentive case, even if they're ultimately terminated because they were a franchise dealer at the time that the cause of action arose. Practically, you're out of business, you may not have money to keep going with the case, I completely understand that.

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And this is one of those areas that we've been discussing kind of in Senate Bill 529 Advisory Committee, that maybe this would be a really good place for rules to say before you can take any action that would result in the manufacturer terminating the dealer or effectuating the termination of a dealer and there's a case pending, you at the very least have to go ask the people that you're dealing with in that case whether or not the stay applies or how the stay applies to this proceeding.

MS. RYAN: And if the tables were turned, would it be the same? So let's just say the termination had occurred first, would that mean the dealer could not have sued for the incentive issue? I'm looking at our two attorneys.

MR. BRAY: I would argue that's right, that the stay does apply. I don't criticize you for that because there's a litany of Code provisions that a dealer could seek remedy under and they're no different than the incentive provision, so I guess termination would apply in

none of those either as something that you need to have the stay lifted to accomplish.

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But in answer your question, no, I do agree.

MS. COST: And your question was if they'd filed the termination first, if they'd file the notice of termination first and the dealer had protested that, and then another claim came up?

MS. RYAN: Let's just say the incentive, a concern with the incentive came up, could they have filed that case?

MS. RYAN: I'm actually going to disagree. I think they can because there's definitely -- there's an extra stay that goes in place when a dealer files a complaint, a protest to the termination that says you remain a full-fledged dealer until that case is ultimately decided. And we've actually had cases that this exact thing has happened is that there's been a termination, that was the original complaint, and then other things have come up subsequent, the dealer was still able to come in. Until that termination actually occurs, they are a full-fledged franchise dealer.

MS. RYAN: So the status quo isn't necessarily clear on both sides then. I'm just trying to get my head on the stay.

MR. BRAY: I agree with what she said, I just

ON THE RECORD REPORTING (512) 450-0342

| 1 | still think you have to lift the stay if you're going to |
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| 2 | do a separate action. I believe the way it normally comes |
| 3 | about is it's like a counterclaim within the existing |
| 4 | action. If the termination comes first, I'll come along |
| 5 | and say, Not only can't you terminate me, but by the way, |
| 6 | I've got some incentive problems with you. And I think if |
| 7 | you're going to call it a separate action, I think you |
| 8 | ought to have to get the stay lifted, she does not. |
| 9 | MR. WALKER: Under the termination, don't they |
| LO | have to take in good cause? |
| L1 | MS. COST: Yes. There are statutory factors |
| L2 | that the board has to ultimately look at to determine |
| L3 | whether there was good cause for the termination. |
| L4 | MR. WALKER: Have those good causes been |
| L5 | presented? |
| L6 | MS. COST: I'm sorry? |
| L7 | MR. WALKER: And have those good causes been |
| L8 | presented at this point? |
| L9 | MS. COST: They have not because the case |
| 20 | hasn't happened. The hearing on the merits is scheduled |
| 21 | for February, I believe. |
| 22 | MR. VANDERGRIFF: Middle February. |
| 23 | MR. RODRIGUEZ: So Molly, can I ask this |
| 24 | question? We have Star here asking us to overrule an |

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interim ALJ order.

MS. COST: Yes. 1 MR. RODRIGUEZ: I'm just trying to address this 2 3 in a motion. If I move to deny that request, does that address the question in front of us sufficiently? 4 MS. COST: I believe so, yes. 5 6 MS. RYAN: Then what happens? What's the It just goes back to SOAH? 7 outcome? 8 MS. COST: It just goes back to SOAH and the 9 rulings that SOAH has made with regard to the motions to 10 abate stand. MR. INGRAM: So the termination would proceed 11 until Star -- I'm sorry, I got lost. 12 13 MR. VANDERGRIFF: They run those two cases concurrently. 14 15 MS. COST: Right. If neither party does 16 anything else to try to bring the matter up again, there 17 still is the ability for Star to request a cease and desist and go through that process, and there is a 18 19 specific right, once the ALJ rules on that, whether they grant it or deny it, there is an appeal for somebody, it 20 depends on which case they file it in. 21 22 MR. RODRIGUEZ: And again, I don't think we're done with this, I think we're going to see this again, 2.3 24 either in one way or maybe two different ways.

MR. INGRAM: I would agree with you, and I'd

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say let's definitely don't throw it away because we want to recycle the paper.

(General laughter.)

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MR. RODRIGUEZ: But I mean, I think eventually -- it's an eventuality, is what I'm suggesting, and I'm just saying if we deny the request at this point in time, we might be contributing to expediting this process as opposed to holding it up.

MR. INGRAM: Yes, but I just have a serious problem with agreeing with the ALJ. In this case I'm sure that if Mercedes Benz had gone through the process of going to SOAH and asked to have the stay lifted that the most likely would have succeeded, but I don't wan to set any kind of precedent so that the next time that someone comes along that we've got an ALJ decision that we've supported

MR. RUSH: Can I ask a question?

MS. COST: Sure.

MR. RUSH: I'm talking now, I'm not suggesting a motion of any kind. If we send it back to say we want it separated again, if we don't, it's going to stay together and then who's going to decide those two cases since they put it together, and somebody is going to appeal and say, No, I want each one decided.

MR. BRAY: Well, the good news is I heard

ON THE RECORD REPORTING (512) 450-0342

| 1 | Mercedes Benz say they were committed to asking the ALJ to |
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| 2 | separate the PFDs for you. So I don't know why they |
| 3 | wouldn't do that, so I think there's already a commitment |
| 4 | that you'll get your part and she'll get her part. |
| 5 | MR. RUSH: Is the opposing attorney okay with |
| 6 | that? |
| 7 | MS. RYAN: Molly, did I hear you correct that |
| 8 | if we send it back to SOAH, there are procedures in place |
| 9 | that can still be exercised to do exactly what's being |
| 10 | requested but not by us but through the SOAH process? |
| 11 | MS. COST: Yes. It may eventually get to you |
| 12 | because, again, if they request a cease and desist to say |
| 13 | stop Mercedes from moving forward with this case, whether |
| 14 | the ALJ grants it or denies it, the board's rules would |
| 15 | allow Star or would allow Mercedes, would all either party |
| 16 | to come back before the board and appeal that decision. |
| 17 | MS. RYAN: And that process piece has not been |
| 18 | done. |
| 19 | MS. COST: That's correct. |
| 20 | MS. RYAN: Similar to the request for the stay |
| 21 | to be lifted was not done. |
| 22 | MS. COST: That's correct. |
| 23 | MS. RYAN: So in some ways we are perpetuating, |
| 24 | well, the wrong decision, we're interjecting in another |
| 25 | one. But the correct process, if I hear you correct, is |

| 1 | to go forward with the cease and desist and make that |
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| 2 | request back to SOAH would be the procedural steps that |
| 3 | are in place. |
| 4 | MS. COST: That's one of them, yes. I also |
| 5 | think Star could file a formal motion to clarify or modify |
| 6 | the stay. |
| 7 | MS. RYAN: So there's still two steps they |
| 8 | could get the outcome that we wouldn't be involved, that |
| 9 | would keep it in SOAH. |
| 10 | MS. COST: That's correct. |
| 11 | MR. RODRIGUEZ: Today we have a request to act |
| 12 | on. |
| 13 | MS. RYAN: We have to act. Right? |
| 14 | MR. RODRIGUEZ: Star's request that we modify, |
| 15 | and I move, Mr. Chairman, that we deny that request. |
| 16 | MR. VANDERGRIFF: So you're moving to deny and |
| 17 | basically adopt the staff's recommendation. |
| 18 | MR. RODRIGUEZ: The staff has recommended that |
| 19 | we decline to hear the appeal of SOAH's interim ruling, |
| 20 | that we decline to enter a cease and desist order, and |
| 21 | decline to hear an order clarifying, and I would agree |
| 22 | with that. |
| 23 | MR. VANDERGRIFF: We have a motion before the |
| 24 | board. Do we have a second to that motion? |
| 25 | MR. WALKER: Can you read your motion again? |

ON THE RECORD REPORTING (512) 450-0342

| 1 | MR. RODRIGUEZ: The effect of the motion is |
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| 2 | what staff is recommending, but all I'm saying is that |
| 3 | Star has brought this matter to us asking us to intervene, |
| 4 | and I'm saying simply let's deny that request. |
| 5 | MR. VANDERGRIFF: And the reason I ask the |
| 6 | qualifying question is the staff gave some specific |
| 7 | reasons why we deny, and so as I understood you, you were |
| 8 | adopting those reasons. |
| 9 | MR. RODRIGUEZ: That's the effect of denying |
| 10 | the request. |
| 11 | MR. VANDERGRIFF: Lack of jurisdiction, proper |
| 12 | process, all those were not followed. |
| 13 | MR. WALKER: All three of their suggestions. |
| 14 | MR. VANDERGRIFF: Yes. That's the motion. |
| 15 | It's not yet been seconded. |
| 16 | MR. WALKER: Which would send it back to SOAH. |
| 17 | MR. INGRAM: Well, anything would send it back |
| 18 | to SOAH. |
| 19 | MR. VANDERGRIFF: It basically would keep us |
| 20 | out of it at this point in time. |
| 21 | MS. RYAN: Other process steps would have to |
| 22 | occur to get to the outcome that's being requested. |
| 23 | MR. BUTLER: I'll second it. |
| 24 | MR. VANDERGRIFF: We have a motion and a |
| 25 | second. Now do we have any discussion on the motion? No |

further discussion? 1 MR. WALKER: Molly, staff's recommendation her 2 is not to do this but to send it back to SOAH. This has 3 been going on, according to this thing for 15 years, as 4 Mr. Ferguson said, 15 years. What's the prognosis going 5 6 forward? On how many more years is this thing going to keep going on? 7 8 MR. VANDERGRIFF: Great question to ask. MR. RODRIGUEZ: I don't think this has been 9 going on 15 years, it's other matters. 10 MS. COST: Correct. The two cases at issue 11 here, the first one, Star 4 was filed in April of 2009, 12 13 and then Star 6 was filed sometime in 2010. MR. VANDERGRIFF: Your term is likely to be up 14 15 before it's done. 16 (General laughter.) MR. RUSH: So clarify. If we send it back and 17 ask them to separate it, is that any different than what 18 19 we're doing here, what the motion is? MR. BRAY: It is. 20 MR. RUSH: But wouldn't that give them some 21 22 direction on what we want? MR. BRAY: No. I don't think you need to. 2.3 24 Like I said, I think there was a commitment on the record

not to separate them docket-wise but to separate them for

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your purposes and for her purposes, and I think that's fine.

MR. INGRAM: And then to work on the opposite side of the motion, if the motion was to be granted -- not the motion, if Star's request was to be granted, isn't the logical thing now for Mercedes to go back to SOAH and then actually go through SOAH and ask for a lift of stay?

MS. COST: Yes.

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MR. PALACIOS: But they don't necessarily have to do that at this point, do they? We're not giving any directives in that regard. That's what I'm not clear on we're sending it back to them without any direction.

MR. VANDERGRIFF: If the motion that's before us was adopted, then SOAH is basically getting no recommendation from us whatsoever, we're just declining to get unaged in it and it will proceed along the path that they're on right now. I don't believe this motion that we'd be passing right now, the motion that's on the floor, not as potentially modified but right now, we just have a motion on the floor to adopt what the staff has said.

MR. BRAY: Not that I'm not trying to argue you out of it at this time, but this language in these three recommendations probably won't they be telling SOAH --

MR. VANDERGRIFF: I'm sorry. You are right, that would separate those two that you're talking about.

MR. BRAY: I'm saying won't they be telling 1 2 SOAH what you say, that you don't have to go request a 3 lift of the stay to file a termination? MS. COST: I would agree with that. 4 MR. VANDERGRIFF: That's the practical effect. 5 MR. INGRAM: Well, I would agree with that 6 because item number 2, wouldn't that -- well, item 2 and 7 3. 8 MR. VANDERGRIFF: That's what I mean, they'll 9 be going along the path they're headed down anyway. We're 10 basically reinforcing that that's a correct path. I'm not 11 saying that's the right decision, I'm saying that's what 12 13 we're reinforcing. MR. PALACIOS: I think we'd be sending them on 14 15 the wrong path then to enforce that type of decision. 16 not disputing anything that's been said here, but I do 17 believe the stays were written in the Occupations Code for a reason and it appears to me that denying this we're, in 18 19 essence, abrogating and denying, again, the purpose of this 803. I would prefer that we give a little more 20 directive to SOAH rather than just saying we're going to 21 22 stay clear of this. MR. RODRIGUEZ: And what would you like to tell 2.3 24 SOAH? I'm just wondering.

MR. PALACIOS: Well, I guess the question is

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either way it gets kicked back to SOAH. If we were to accept his request, what's the difference?

MR. RODRIGUEZ: If we accept the request?

MR. PALACIOS: Yes.

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MR. RODRIGUEZ: They're asking us to intercede in an interim order. That's what they're asking us to do, that's what Star wants us to do, and all I'm saying -- I'm proposing we deny the request to intercede and let them resolve their issues with SOAH. If you want to remand it, again, deny and remand to SOAH with specific instructions to separate or otherwise -- I think Brett has spoken to this already, may not need it -- but if you want specific instructions sent to SOAH with that motion, I'm open to listening to it.

MR. PALACIOS: I'm only trying to think from a practical standpoint at this point. Even if the stay were to be lifted, from a practical standpoint, what difference does it make, the termination proceeding has already gone forward. I mean, you can't undo that, the damage has been done. I just don't want to set precedent going forward now. And I do disagree with the director on this. I believe the stays are in place for a purpose. There is a process to lift a stay, so then how do you decide well, you don't have to follow the process this time. It just leaves too much subjectivity. There is a process in place

to prevent abuse from each side, and in this case I don't think it was followed. Again, all I'm trying to do is set precedent going forward, that a stay can be ignored just on

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MR. RODRIGUEZ: We have a history and I'm sure this is not the first stay we've either sent back or not agreed with.

MR. PALACIOS: But we're not necessarily saying we -- by kicking it back we're not saying -- we're saying we agree with --

MR. RODRIGUEZ: We're denying a request to modify the stay. That's correct.

MR. VANDERGRIFF: We're not modifying the stay.

MR. RODRIGUEZ: To intercede.

MR. VANDERGRIFF: The part that I'm troubled with is I just have this sinking feeling that the cylinders that were intended to spark and make the process go forward, we might be, perhaps inadvertently, in an effort to just avoid the jurisdictional question, we might be setting something up to avoid what I think is a process that you go through to lift a stay in order to take a termination or you go through to lift a stay in order to get other relief that you might choose to seek. It's this presumptive stay that comes in when there's a case filed.

I'm just concerned about the unintended

consequences, because I go back to the language that this agency adopted and pushed to pass in 803(c) where we didn't want to have to create multiple cases so you could initiate or request a hearing -- which the intent is that before SOAH -- to modify, vacate or even clarify the extent and the application of the stay.

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I mean, I would feel more comfortable, for example, if SOAH clarified -- and I guess this board is the final authority or we had some formal opinion that gave some weight to it -- that said what you said earlier which is one way is to do that but you could file a separate case, you could go ahead and proceed with the termination case. I don't think we've settled the question on the process yet, and I'm feeling that we're going to, by making this decision, perhaps settle the question on the process.

Do you understand where I'm coming from here?

MS. COST: Sort of. I apologize. I kind of lost you in the middle there somewhere.

MR. VANDERGRIFF: Okay. We've indicated in the law that's just been passed -- and we had a hand in that passage -- what we thought would happen which is you don't go file a new action, just request a hearing to modify, vacate or clarify the extent and application of a statutory stay. Now, there's no statutory stay, I

understand that, but we've got this presumptive stay as a result of the Star 4 case being filed, it's fairly settled that would happen, and now we're saying basically, No, you can file a new termination case.

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Nobody is suggesting here, certainly not me, that you can't terminate a poor performing dealer, but we've just basically blown a hole in that presumptive stay that comes out of the Star 4 case or any case like that, and that's what's concerning me.

MS. COST: Well, what I've heard from this board today is that what parties need to do is if there's already a case pending for some other kind of complaint and the manufacturer intends to send a notice of termination, they need to go in that case that's already pending and request a hearing to either lift or have the stay clarified or modified to allow them to do that. And if they don't get that from whoever they go before for the hearing, then they can't issue that notice of termination, that they actually have to go ask permission to issue that notice of termination before they issue it.

MR. WALKER: So the first thing that needs to be done is we need a clarification of the stay.

MR. VANDERGRIFF: A ruling could come down from SOAH that this board would review, I guess, that says you can file a whole separate action, here's our opinion about

this presumptive stay that comes out of a filed case. And I'm okay to deal with that.

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I'm not trying to suggest that a poor performing dealer should continue and exist. I also believe, from personal experience, that sometimes the poor performing dealer can continue for a nauseating period beyond the time that they, frankly, should have been taken out of business. So I'm not trying to suggest continued roadblocks in that, I'm just concerned that with a newly passed bill, a process that's somewhat settled, that we're creating a loophole here, perhaps by accident, that's going to cause us more problems down the line.

MR. BRAY: Molly, you've been an ALJ a long time and you know a lot of ALJs. If you take Mr. Ferguson's set of facts that he was describing earlier, that really, really bad situation, can you imagine you or any ALJ -- I just want to give the board some level of comfort -- can you imagine anybody that if a motion came in to lift a stay with those facts that you wouldn't probably do it?

MS. COST: No. You would say I'm either lifting the stay or I'm clarifying it to say that you can file your notice of termination, and we're either going to take these cases parallel or whatever we're going to do with them.

MR. BRAY: It's just a process. 1 2 MS. COST: Right. It's an extra check if 3 there's already a case pending MR. VANDERGRIFF: Is there an expedited manner 4 in which you can request that or it doesn't take nine or 5 6 ten months to get a hearing if you're trying to lift a stay? 7 8 MS. COST: I can't speak for SOAH. I mean, it shouldn't, but I don't know. It didn't used to when -- I 9 10 mean, we did get motions to clarify and lift and modify 11 stays. MR. BRAY: And you treated those kind of like 12 13 temporary orders, temporary injunction type of things, so they were heard pretty quickly. 14 15 MS. COST: Right. They were heard fairly 16 quickly. 17 MS. RYAN: Isn't that basically trying -- in order to go get the stay lifted, to present the notice of 18 19 termination, wouldn't I basically have to try the case to get permission to go issue my notice of termination if I 20 were a manufacturer? 21 MR. BRAY: In any trial. 22 So in some ways that is -- I mean, I 2.3 MS. RYAN: 24 think that that goes to the point of status quo is that 25 the business relationship stays in place and both parties

are under obligation to perform in certain manners, and if not, there are certain consequences that are in play, and by stating that you have to go get permission and try your case up front to et permission to go try your case, I don't think maintains status quo. I mean, I have some concerns there.

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MR. VANDERGRIFF: It's kind of like a temporary injunction hearing, for example. I mean, it's such an extreme measure to shut somebody down that you almost have to present that kind of position to the court so that they'll provide you with that kind of injunctive relief. So in effect, if you're terminating a dealer, I mean, that's the most extreme measure that you can take in that relationship.

MS. RYAN: But the dealer files a protest immediately and then it goes before a hearing or trial, and then somebody makes a decision on who's right and who's wrong, so to speak. So the process is in place that no termination occurs until the trial is heard. An then in this case, it wouldn't even occur until from here it came before the board too. So there's probably two steps for determining is the termination valid and I think what I hear is we're saying there's got to be three steps. I just want to make sure I'm clear.

MR. VANDERGRIFF: To make sure I'm clear, my

concern is a further chilling effect. You have a settled position that if a case has been filed that there's a presumptive stay over any other action, that you would go through and request clarification to either clarify, lift or modify that stay. And the staff, as well as Mercedes Benz, has made the argument: No, you can go a separate route, follow direct termination action and terminate that dealer.

And I'm concerned on two levels. One, I thought there was a process over here that now there seems to be a different path. Perhaps I'm wrong, perhaps this is something that's been done frequently, all the time. So if that's the case, then that argument would be wrong. But that's the concern there.

And then the second, more foreboding effect to me, is the chill effect that could be there if the marketplace now knows that: Okay, I can file an action and then a termination action can be filed against me and I have no real protection because I have filed this first action. I'm concerned about the chilling effect that might have on the ability of, in effect, what I would call -- I hate to use this term because it's not really appropriate -- the whistle blower on a program. I'm concerned about that.

MS. RYAN: Doesn't the protest process put the

protection in place?

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MR. VANDERGRIFF: Well, they've not gone through -- they should, in my opinion, be back through that same case -- which, in effect, with respect to this case it would be the incentive program -- to get a ruling that we can file a separate termination action, that this does not affect this case, this is not in reaction or retaliation on that case, this is because this is a poor performing dealer. The last thing I want to do is keep a poor performing dealer in business. The part that concerns me about all this is the length this dispute between these two parties has gone on. That's not our role today, but it indicates to me that where's there's smoke there's fire, this may not be a performing dealer. But I'm still concerned about the way -- I'm looking at the process versus this individual case.

MS. RYAN: Right, and I have no knowledge of the details.

MR. VANDERGRIFF: And when it says here -- what we passed as an agency was this provision that's being interpreted and used by both sides -- that a person affected by a statutory stay imposed by this chapter may request a hearing to modify, vacate or clarify the extent and application of that stay. And that didn't really happen here. And I'm perfectly fine it doesn't come

before the board, it can go before SOAH and SOAH make that ruling.

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MS. RYAN: And I would probably be clearer with that if somebody could say that the stay absolutely included a termination, and I can't hear that. I mean, I'm not trying to make it worse. I would agree if somebody had said, Termination falls under normal course of business, and yes, they should have known that. Or if there had been another situation where somebody had done that. But what I hear is it hasn't been really done in the past, maybe because this is the first time we've crossed that bridge, and there isn't a clear understanding of whether a termination falls in the stay.

MR. PALACIOS: I think the stay has to be broad. Termination would be, I guess, the extreme example of why you'd have a stay, but as I see it, it's to maintain status quo, to not to affect the legal rights of a dealer, and by following a process of lifting stays, I believe we now ensure that everybody is treated fairly, whether it's the dealer, the manufacturer, so that on one end there's no retaliation on behalf of a manufacturer, on the other end there's no abuse by the dealer.

But again, I think to get really specific on what a statutory stay covers and what it doesn't, I think it could backfire and I believe that's why there's a

process in place to go before SOAH, or whoever it may be, to have the stay lifted. In my judgment, it's the best process to follow, and that's why I'm really reluctant to endorse the motion that Member Rodriguez made. It doesn't really address that, and I don't want to set precedent now that we can just kind of usurp stays based on whatever. I mean, there's no real guidelines here. It's not for -- I think it's something SOAH should decide, and there has to be a process in place to address this -- which there is, it just needs to be followed.

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MR. VANDERGRIFF: Well, we've had a bunch of discussion. We still have a motion on the floor with respect to your motion.

MR. RODRIGUEZ: I'm not quite sure that my motion isn't what he was asking about, but nonetheless, does someone want me to modify it in any way, shape or form?

MR. WALKER: Nobody seconded it?

MR. BUTLER: I did.

MR. RODRIGUEZ: We have a second over here.

MS. RYAN: Can you repeat it? To adopt basically the staff's recommendation.

MR. RODRIGUEZ: We have a request from Star Motors before us today to intercede in an interim order issued by an ALJ judge, and I am moving that we deny that

request. The effect of that denial is to decline to hear the appeal, to decline to hear the requested cease and desist order or to enter an order as requested, and then to decline to hear the order to clarify and further the ALJ's stay. That's the effect of denying the request to intercede in a matter that SOAH is handling right now. That's all I'm doing. I'm just saying let these parties go back to SOAH and seek relief from SOAH because eventually we're going to end up over here anyway, I think, we're going to see these again.

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MR. INGRAM: I totally agree, and I'm sorry to drag on the discussion on this, I totally agree that we're going to hear it again. Actually, quite frankly, it doesn't matter if we go with Star's recommendation or Star's proposal or if we go against, it doesn't matter, we're going to hear it again. But the concept that no matter what we do it's going to go back to SOAH and we're going to hear it again is true, but I think that we are actually much bigger message than that, and we're sending a message out into the marketplace that says: You need to be cautious about protesting anything because the manufacturer does not have to go to SOAH to lift -- or to terminate their franchise.

MS. RYAN: But they can't terminate. So the termination notice is sent, the dealer protests it, and

then it goes to hearing. Nothing occurs until it goes to hearing.

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MR. VANDERGRIFF: You would have to do that except that there has been the added protection that you have to go back and lift the statutory stay, and in this action they're not having to do that, they're basically putting that case on a concurrent path, perhaps, but still to the side and they're moving forward with termination.

And I'm not suggesting they shouldn't move forward with the termination, I'm just suggesting there was a process in place that they're doing it a different way, so that could have the chilling effect on the dealer marketplace.

MR. INGRAM: I said that very poorly. It's just that there's a procedure in place and I think by just sending it back and saying we deny --

MR. RODRIGUEZ: We're not sending it back, we're exercising our right up here to make a decision. We have a motion that's been brought to us, it's a matter that's been properly raised.

MR. BUTLER: Let's vote your convictions and then I'll make a motion if this one fails.

MS. RYAN: Can I clarify one thing just on what you said, and again, I'm sorry to. So based on what you just said, if termination notice is sent -- if the situation that occurs now, we're saying they should have

gone to lift the stay to send it in, however, we're not removing all the protection because if that's the message we send back and that's the process we establish through this vote, there's still another process, two processes that can occur. The dealer can go back and request a cease and desist back to SOAH, or clarify the stay to see if the decision was even valid. Is that correct, or am I misunderstanding that? So there's still two steps.

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MR. VANDERGRIFF: Well, I think SOAH is going to proceed at this point with a termination case.

MS. RYAN: But procedurally -- I'm not trying this case -- there would still be two steps that the dealer could take to get to where they wanted. Am I wrong?

MR. VANDERGRIFF: I think this is headed to a termination case, and the decision after that will be whether or not the termination was valid, and that may or may not come back to us.

MS. RYAN: We're making that decision based now on having information on what the SOAH ALJ has already done. If we didn't have that, would we say their process has enough steps? That's what I'm wondering.

MR. PALACIOS: My concern is in any case once a termination process has begun, whether or not the dealership is terminated, the damage is done. Word of

termination is out, a dealer, for all intents and 1 2 purposes, is terminated. MR. RUSH: Well, isn't it already out? 3 MR. RODRIGUEZ: It's already out. 4 MR. PALACIOS: The process would be that the 5 6 manufacturer would go to SOAH to request the lift, and at that point if there's adequate facts or whatever to back 7 8 up a reason to lift the stay, then they could proceed with the termination. 9 10 MR. RUSH: But I have a feeling that if this has been going on since '10 --11 MR. PALACIOS: Well, in this particular case. 12 13 I'm not necessarily debating this case, I'm just looking at future cases. 14 15 MR. RUSH: If it's been going on since '10, everybody knows it, it's no secret. If they have or 16 17 haven't been injured, the knowledge is out there. MR. PALACIOS: I agree with you, but I'm just 18 19 looking at other cases where there's potential harm to a dealer, where a termination case may not have been 20 initiated but there's a stay in place for whatever reason, 21 and worst case scenario the manufacturer wants to 22 retaliate, well, we're going to terminate you, and it's 23

been shown that we don't have to have a stay lifted, we're

just going to do it, and they announce that a termination

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process has been done, the dealership has been harmed tremendously at that point.

2.3

MR. RODRIGUEZ: That's already happened, and the matter in front of us is the dealer has brought this to us, and he's asking us to intercede, and my motion is that we not, that's all. He's facing notice of termination as one procedure, and he's got another one on incentives, and those two are things that are going, probably joined or separated later on, whatever that outcome is. But he's coming to us for us to intercede. All I'm saying is it's irrelevant to the termination, it's irrelevant whether notice is out or not. That's been taken out of our hands months ago, so that's already happening. All I'm saying is that he's asking us now to intercede in a process that's been started against him and all I'm saying is we should deny that request, that's all my motion is.

MR. VANDERGRIFF: I understand.

MR. INGRAM: We should call the question.

MR. VANDERGRIFF: I was going to say somebody needs to call the question to make me call a vote, so I'll close the discussion and call for your vote which is, as I understand it, a motion to deny Star's application, but it includes taking the staff recommendations here. All those in favor of that motion, please raise your right hand.

| 1 | (A show of hands.) |
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| 2 | MR. VANDERGRIFF: We have three in favor. |
| 3 | Board members Rodriguez, Ryan and Butler in favor of the |
| 4 | motion. |
| 5 | All those opposed? |
| 6 | (A show of hands.) |
| 7 | MR. VANDERGRIFF: And Board members Rush, |
| 8 | Vandergriff, Ingram, Palacios and Walker are opposed to |
| 9 | that motion. |
| 10 | MR. INGRAM: Now you'll entertain another |
| 11 | motion? |
| 12 | MR. VANDERGRIFF: We certainly can do that. |
| 13 | One suggestion I have that maybe has also hurt us here |
| 14 | today in the sense of making a decision, and I know we're |
| 15 | not a typical appellate court that might hear arguments |
| 16 | and then make a decision at a date later, but perhaps this |
| 17 | board would benefit, particularly since we've had, |
| 18 | frankly, some differing advice even from our own counsel, |
| 19 | that we maybe consider tabling this matter until next |
| 20 | month and bring this back with some further information. |
| 21 | I don't know how that affects the parties, but |
| 22 | I'm concerned that we're getting multiple advice here. |
| 23 | MR. RUSH: I tend to agree with you. |
| 24 | MR. BUTLER: I so move. |
| 25 | MR. VANDERGRIFF: I would ask if the parties |

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are okay with that if we brought this back in December.
Mr. Coffey?

2.3

MR. COFFEY: (Speaking from audience.) Well,
Mr. Chairman, my concern is the same one expressed by
Member Palacios and that is the damage is ongoing. If the
termination case is abated so that can finish the
incentive program case, I think that would alleviate
things somewhat. But to simply table it, certainly that's
better than denying our request, but the damage is
ongoing.

All we are asking is that we abate the termination case, we separate the two, allow the incentive case to go forward to a final order, and then they can pick up on their termination case again. It's simply a matter of timing. That's all we're asking: don't let the damage to us continue while the whole issue of whether we should be terminated is still up in the air and making it so difficult for my client to prosecute the incentive program case -- you know what I'm saying.

MR. VANDERGRIFF: I do, and I understand all of that. My problem is with the advice that we've gotten, I'm not necessarily prepared -- it's only my vote, but I'm not necessarily prepared to take the extraordinary action of abating a case I'm not sure about our jurisdiction with that.

| 1 | MR. COFFEY: Certainly tabling it, Mr. |
|-----|---|
| 2 | Chairman, would be better than some of the alternatives. |
| 3 | MR. RUSH: If you did something today, it's not |
| 4 | going to happen till next year. SOAH isn't going to get |
| 5 | anything done in the next two or three months, I don't |
| 6 | think 30 days is going to kill anybody. |
| 7 | MR. VANDERGRIFF: Understand. His point is |
| 8 | from a business perspective and he does have a point |
| 9 | there. You know that better than I do. |
| 10 | But we do have a motion, I don't have a second |
| 11 | yet, a motion to table it from Mr. Butler. |
| 12 | MR. RODRIGUEZ: Second. |
| 13 | MR. VANDERGRIFF: And a second from Mr. |
| 14 | Rodriguez. So we have a motion and a second. All those |
| 15 | in favor please raise your right hand. |
| 16 | (A show of hands.) |
| 17 | MR. VANDERGRIFF: Those opposed? |
| 18 | (No response.) |
| 19 | MR. VANDERGRIFF: None opposed. We will get |
| 20 | with staff and then shortly with the attorneys about what |
| 21 | to expect at our next meeting in December. Thank you. |
| 22 | MR. VANDERGRIFF: We have come to the need of |
| 23 | our agenda items and we have no further need of another |
| 24 | executive session. Is there any other matter the board |
| o = | |

members wish to bring before us?

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| 1 | MR. RODRIGUEZ: I think we ought to make them |
|---|---|
| 2 | stay here till next month. I was kidding. |
| 3 | (General laughter.) |
| 4 | MR. VANDERGRIFF: With that, we are adjourned. |
| 5 | (Whereupon, at 2:59 p.m., the meeting was |
| 6 | concluded.) |

CERTIFICATE

MEETING OF: Texas Department of Motor Vehicles Board

4 LOCATION: Austin, Texas

5 DATE: November 10, 2011

I do hereby certify that the foregoing pages, numbers 1 through 194, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Department of Motor Vehicles.

 11/20/2011 (Transcriber) (Date)

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